LEGISLATION FOR THE IMPROVEMENT OF THE JUDICIARY

HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

JUDICIAL SURVIVORS ANNUITIES, ESTABLISHMENT OF A NATIONAL COURT OF APPEALS, OMNIBUS JUDGESHIP BILL, AND FEDERAL JURISDICTION OVER DEPARTMENT OF LABOR EMPLOYEE COMPENSATION SUITS

SEPTEMBER 24, 1982

Serial No. J-97-141

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
11-865 O WASHINGTON : 1983

S521-30

COMMITTEE ON THE JUDICIARY

STROM THURMOND, South Carolina, *Chairman*

CHARLES McC. MATHIAS, Jr., Maryland
PAUL LAXALT, Nevada
ORRIN G. HATCH, Utah
ROBERT DOLE, Kansas
ALAN K. SIMPSON, Wyoming
JOHN P. EAST, North Carolina
CHARLES E. GRASSLEY, Iowa
JEREMIAH DENTON, Alabama
ARLEN SPECTER, Pennsylvania

JOSEPH R. BIDEN, Jr., Delaware
EDWARD M. KENNEDY, Massachusetts
ROBERT C. BYRD, West Virginia
HOWARD M. METZENBAUM, Ohio
DENNIS DeCONCINI, Arizona
PATRICK J. LEAHY, Vermont
MAX BAUCUS, Montana
HOWELL HEFLIN, Alabama

Vinton DeVane Lide, *Chief Counsel and Staff Director*
Mark H. Gitenstein, *Minority Chief Counsel*

Subcommittee on Courts

ROBERT DOLE, Kansas, *Chairman*

STROM THURMOND, South Carolina
ALAN K. SIMPSON, Wyoming
JOHN P. EAST, North Carolina

HOWELL HEFLIN, Alabama
MAX BAUCUS, Montana

Richard W. Velde, *Chief Counsel and Staff Director*
Arthur Briskman, *Minority Counsel*

CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

Page
Heflin, Senator Howell 1
Dole, Senator Robert 16

CHRONOLOGICAL LIST OF WITNESSES

Griswold, Erwin, attorney, Jones, Day, Reavis & Pogue, Washington, D.C.; Daniel J. Meador, professor of law, University of Virginia Law School; and Hon. Robert H. Bork, U.S. Court of Appeals for the District of Columbia Circuit, Washington, D.C 2
Weller, William James, legislative affairs officer of the Administrative Office of the U.S. Courts 17
Kaufman, Hon. Irving R., U.S. Court of Appeals, second circuit, New York, N.Y.; Hon. James Harvey, Federal District Court, Bay City, Mich.; Hon. Spencer M. Williams, U.S. District Court for the Northern District of California; and William H. Mulligan, attorney, Skadden, Arps, Slate, Meagher & Flom, New York, N.Y 306
Tone, Judge Philip W., chairman, Judiciary Committee, American College of Trial Lawyers 312
Potts, Robert L., attorney, Florence, Ala.; Gene M. Hamby, Jr., attorney, Sheffield, Ala.; and Charles Rosser, attorney, Tuscumbia, Ala 348

ALPHABETICAL LIST AND MATERIAL SUBMITTED

Bork, Robert H.: Testimony 2
Dole, Senator Robert: Prepared statement of Senator Rudy Boschwitz 17
Griswold, Erwin: Testimony 2
Harvey, James:
  Testimony 306
  Prepared statement 310
Heflin, Senator Howell: Prepared statement of Clement F. Haynsworth, Jr 305
Kaufman, Irving R.:
  Testimony 306
  Letter from Robert F. Erburu, president and chief executive, Los Angeles Times Mirror, September 22, 1982, to Senator Robert Dole, chairman, Subcommittee on Courts 315
  Letter from G. Wallace Bates, president, Business Roundtable, September 16, 1982, to Senator Strom Thurmond, chairman, Senate Committee on the Judiciary 315
  Prepared statement 317
  Letter from Malcolm Muir, judge, U.S. District Court, Middle District of Pennsylvania, October 1, 1982 337
Meador, Daniel J.:
  Testimony 2
  Prepared statement 270
  "Comparison of Federal Legal Influences on State Supreme Court Decisions in 1959 and 1979," report prepared by the National Center for State Courts, D.C. office, under contract with the Federal Justice Research Program, U.S. Department of Justice, 1981 293
Mulligan, William H.:
  Testimony 306
  Prepared statement 346

Page
Potts, Robert L.:
  Testimony 348
  Prepared statement 362
    Exhibit 1: Affidavit of Sallie H. Sims, with exhibits A through F 371
    Exhibit 2: Letter from the Office of Workers' Compensation Programs, November 23, 1981, to Jack K. Whitten 392
    Exhibit 3: U.S. Merit Systems Protection Board Appeal, filed by Frank T. Dyer, with exhibits 1 and 2 394
    Exhibit 4: Frank T. Dyer's filing for worker's compensation 402
    Exhibit 5: Letter from Frank T. Dyer, June 7, 1982, to John P. Warwick, supervisor, Benefit Section, TVA Retirement System, re: medical retirement 404
    Exhibit 6: Initial Decision and Order of Dismissal, in the matter of Frank T. Dyer v. TVA Agency, September 9, 1982 421
    Exhibit 7: Letter, August 23, 1982, to A. Jackson Woodall, Jr., Tennessee Valley Authority, re: Frank T. Dyer v. TVA 424
    Exhibit 8: Letter, September 16, 1982, to Dr. Louis L. Coker, TVA, Medical Center, re: Frank T. Dyer's OWCP claim 425
    Exhibit 9: Letter from A. Jackson Woodall, Jr., staff attorney, TVA, re: status of Frank T. Dyer's disability retirement claim 426
Hamby, Gene M., Jr.:
  Testimony 348
  Prepared statement 427
Rosser, Charles: Testimony 348
Tone, Philip W.:
  Testimony 312
  Prepared statement 313
Weller, William James:
  Testimony 17
  Press release issued by the Judicial Conference of the United States, September 23, 1982 19
    Roster of members of the Judicial Conference 21
    Resolution of the Judicial Conference 22
    Memo from Robert E. DeMascio, chairman, Committee on the Administration of the Bankruptcy System, September 23, 1982, to Members of the Judicial Conference, with attached Rule and position paper 22
  Memo from William E. Foley, Director, Administrative Office of the U.S. Courts, September 27, 1982, to all judges and clerks of the U.S. Courts of Appeals, U.S. District Courts, and U.S. Bankruptcy Courts; subject: The Bankruptcy Court System after October 4, 1982, in absence of congressional action 25
  Letter, September 28, 1982, to Senator Strom Thurmond, chairman, Senate Committee on the Judiciary 27
    Enclosures: Tables of currently authorized judicial positions, 1980 Judicial Conference recommendations, and 1982 Judicial Conference recommendations:
      By circuit 29
      By State and district 30
    Tables: Comparison of present number and arrangements for bankruptcy judges with recommendations of the Director made pursuant to section 406 of Public Law 95-598, recommendations of the Judicial Councils and the Bankruptcy Committee of the Judicial Conference of the United States 33
  Report of the Judicial Conference Committee on Court Administration 50
    Appendix A: U.S. Courts of Appeals judgeship recommendations 55
    Appendix B: U.S. District Courts judgeship recommendations 79
Williams, Spencer M.:
  Testimony 306
  Prepared statement 338
  Letter from Mrs. Blake West, Mobile, Ala., September 15, 1982 345

APPENDIX

PROPOSED LEGISLATION

Page
S. 1403, a bill to amend section 376 of title 28, United States Code, in order to reform and improve the existing program for annuities for survivors of Federal Justices and judges 433
S. 1529, a bill to establish a National Court of Appeals, and for other purposes 438
S. 1874, a bill to amend section 376 of title 28, United States Code, in order to reform and improve the existing program for annuities for survivors of Federal Justices and judges 449
S. 2035, a bill to establish a National Court of Appeals, and for other purposes 454
S. 2296, a bill to provide that district courts shall have jurisdiction in Department of Labor Employees' Compensation Appeals Board actions 467

ADDITIONAL SUBMISSIONS

Letter from Raymond J. Donovan, Secretary, Department of Labor, to Senator Strom Thurmond, chairman, Senate Committee on the Judiciary 473
  Attachment A: History of Employees' Compensation Appeals Board (ECAB) 475
Letter from Senator Howell Heflin, October 8, 1982, to James A. Yance, Cunningham, Bounds & Byrd, Mobile, Ala 477
  Attachment: Resolution of the Alabama Trial Lawyers Association 478

LEGISLATION FOR THE IMPROVEMENT OF THE JUDICIARY

FRIDAY, SEPTEMBER 24, 1982

U.S. SENATE,
SUBCOMMITTEE ON COURTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2228, Dirksen Senate Office Building, Senator Howell Heflin (acting chairman of the subcommittee) presiding.

Staff present, majority, for Senator Dole: Richard W. Velde, chief counsel and staff director, and Patricia A. Brown, chief clerk; minority, for Senator Heflin: Arthur Briskman, chief counsel, and Randal Black and Paula Argento, counsels.

OPENING STATEMENT OF SENATOR HOWELL HEFLIN

Senator HEFLIN. We will come to order. Today, the Subcommittee on Courts will examine five bills in areas of important concern to our Federal judiciary.[1]

I would first like to thank Senator Dole, the subcommittee chairman, for calling this hearing, and his most capable staff for their efforts and cooperation in preparing today's hearing.

We will receive testimony on proposals to create a National Court of Appeals, to reform the existing program for judicial annuities, and to grant district court jurisdiction over appeals from Workmen's Compensation Appeal Board's decisions.

Our first panel will address Senate bill 2035 and other legislation to create a National Court of Appeals. Senate bill 2035 would create a National Court of Appeals composed of a pool of active circuit judges and active senior circuit judges, and then headed by a Chancellor of the United States.

Last November, this subcommittee held hearings on a separate piece of legislation, S. 1529, which would create a National Court of Appeals, composed of one Chief Justice and eight associates. There was a basic consensus in favor of the National Court of Appeals concept on the part of most witnesses, but there were differing views on its composition. Some held that in the name of acceptance and confidence that a National Court of Appeals must mirror the Supreme Court, with permanent judges and en banc decisions. It was thought that the decisions by smaller, rotating panels would not carry enough prestige and weight to be respected by either the

---

[1] For text of the bills, see appendix.

U.S. Supreme Court or the higher State courts or the U.S. circuit court. There was also a fear of conflicting panel decisions, which would confuse the law even more. And, then, others believe that a nine-judge permanent body looked too much like the Supreme Court, and its decisions would only impair respect for those of the Supreme Court, and then produce even more confusion in the law.

They suggested that a better structure might be panels of five or seven judges, because these would be recognized in power to overturn the Federal and high State courts, but would not mirror the highest court in the land.

Today, we will focus on the panel concept, in this case, panels drawn from a pool of circuit judges, and perhaps panels drawn from senior circuit judges, who are physically and mentally able to carry on their duties, and headed by a permanent Chancellor, who is appointed directly by the Chief Justice of the United States, or under different provisions, it could be appointed by the President. Ultimately—I believe it really would be a constitutional problem unless it was appointed by the President—ultimately, this committee and this Congress will have to determine what changes should be made to eliminate the confusion in our law and to add stability and to eliminate the burden to our Supreme Court.

Your comments on either of these National Court of Appeals will be appreciated.

First is a panel, composed of the Honorable Robert Bork, of the U.S. Court of Appeals for the District of Columbia; Prof. Daniel J. Meador, professor of law at the University of Virginia Law School; and Dean Erwin Griswold, who is former Solicitor General of the United States, former dean of Harvard Law School, and now, a practicing attorney in Washington.

Gentlemen, we are happy to have this distinguished panel appear before us, and if you will come forward, we will be delighted to hear from you.

I suppose we will go first with the senior—and that would be Dean Griswold—if you will, senior in service, we will say, not to mean in age.

STATEMENTS OF ERWIN GRISWOLD, ATTORNEY, JONES, DAY, REAVIS & POGUE, WASHINGTON, D.C.; DANIEL J. MEADOR, PROFESSOR OF LAW, UNIVERSITY OF VIRGINIA LAW SCHOOL; AND HON. ROBERT H. BORK, U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, WASHINGTON, D.C.

Mr. **Griswold**. Thank you, Senator.

I have long been concerned with this problem. I think the time has passed 10 years ago when something should be done about it, and, therefore, I greatly welcome the fact that this bill has been introduced and that these hearings have been held.

I am not much concerned about the problem of the Supreme Court. That may sound a little surprising, but statutes which have been passed have left the Supreme Court's burden pretty much in their own hands. Their jurisdiction is now almost entirely discretionary. I think that further steps should be taken to make it completely discretionary, and that the Court not only should accept only those cases for its own decision which it thinks require decision by the highest court of the land, but that the Court should be relieved of the burden to take even more cases, because there are so many cases which ought to be given a final plenary decision.

I am greatly concerned about the burden on the U.S. courts of appeals, and I am concerned at what is happening because of that burden. I am now working on a case involving a substantial sum of money, in which, after briefs of 40 pages were filed by both sides, the court of appeals determined that there should be no oral argument and then decided the case without opinion, simply said, "Order: Judgment Affirmed."

Many years ago, Judge Learned Hand said, in very strong terms, that, "Thou shalt not ration justice," and this seems to me to be a very clear case where justice is being rationed. I do not particularly criticize the court of appeals. It has such an enormous list of cases that it has to find some way to deal with them. I think that the burden is therefore on the legal profession and on the Congress to work out a better way.

One of the problems is the lack of nationwide appellate capacity, the lack of a court somewhere which, in a higher proportion of the cases than is now the situation, can make a decision which has precedential effect from the Atlantic to the Pacific, from Key West to Point Barrow. As it is now, a court of appeals decides a case; that is interesting to another court of appeals, but in no sense binding. Litigants having cases in other circuits go ahead with their litigation. Litigants having cases in the same circuit go ahead with their litigation because they hope that by the time their case comes up, some other circuit may have decided the other way, and there will be a conflict, and they will have an opportunity to present the case higher up.

One solution to that problem—and I could enlarge on what the problems are, but they are well-known—one solution to that problem would be to have more U.S. courts of appeals arranged on a topical basis. We now have two—or, we will have, on October 1, next week. One is the temporary emergency court of appeals, which has exclusive jurisdiction to review cases in the energy area. And I have myself, in my own practice, had a very interesting experience of the effect of that. A case came to my office which, on examination and research, we found was essentially the same as another case which was pending before the temporary emergency court of appeals. The other case came from California; my case came from Oklahoma. They would have gone to different courts of appeals but for TECA, as it is called. The temporary emergency court of appeals decided the case in favor of the position which I was taking. I waited until the Solicitor General had decided that no review would be sought from the Supreme Court. I then wrote a letter to the general counsel of the Department of Energy and said, "My case is the same as the other case." He said, "We will look into it," and 6 weeks later, I received a letter saying that my case was being adjusted in accordance with the decision of TECA. That would not have happened if it had been a decision of the ninth circuit, and my case was pending in the tenth circuit, which includes Oklahoma.

We also will have, next week, the U.S. Court of Appeals for the Federal Circuit, with exclusive jurisdiction to review decisions in patent cases from all the district courts, and also in Tucker Act cases from all the district courts. My own view is that it would be desirable if that court or some other court was given exclusive jurisdiction to review the tax cases. We would thus do two things. We would greatly reduce the number of cases coming to the courts of appeals; we would also make it possible for counsel both for the Government and for private parties to advise their clients. As it is now, you tell the client, "Well, there are several cases against you, but who can tell how your case will come out, and there is quite a lot involved, so it is really worthwhile to keep it going." But if you had a court with nationwide jurisdiction which could make a decision which was binding on all the lower courts, that situation would be alleviated, and, in my view, there would be a very considerable reduction in the amount of litigation in the courts, because administrative officers would know what they can do and what they ought to do, and counsel advising clients, would have the same information.

Now, the National Court of Appeals proposed by S. 2035 has the same general objective, that is, to provide more generally a method by which a nationwide effective decision can be reached, and I am strongly in favor of that, and I would take S. 2035 as it is written, or almost any other way, as an important step forward, which could be perfected in years to come.

Having said that, I would like to state briefly a couple of reservations I have about it as it is. I do not particularly like the title of "Chancellor." That is a new one in our Federal judiciary. Entomologically or historically, it relates to equity jurisdiction, and this court would not have any particular equity jurisdiction. And moreover, it seems to me to be a little highfalutin. The Chief Justice is Chief Justice. He is not superhigh panjandrum. And my thought would be, perhaps, designating all the judges on the National Court of Appeals with the title of Justice. We have reserved Justice for the Supreme Court, but this court would be a major court, immediately below the Supreme Court, and I think we might call all of them Justice, and then the chief judge, we might call Presiding Justice. And that seems to me to be a new and different designation with dignity, which to me would be an improvement.

Now, the other thing I do not like about the proposal—and I understand why it is there, and as I have said, I would take it if that is what we have to have—is the shifting character of the personnel who will make up the court. I think it is very important, if we are going to have a court which has nationwide jurisdiction, that its decisions be somewhat firm, though not cast in concrete. Decisions of the Supreme Court get overruled or qualified from time to time, but by and large, you can rely on them subject to the ordinary professional lawyer's judgment. But if decisions of the National Court of Appeals are made by one, different panels, and two, by a group of judges who are constantly changing, I think that it will not be as effective as it could be if we bit the bullet and established a court with a regular, Federal, life tenure, permanent bench of judges.

I am a little concerned about the suggestion that this should be made up largely of senior judges. These senior judges in the United States include a considerable number of the best Federal judges in the country, and they are a remarkable group. They also include some other persons who had fine careers, but who are—I say this with some hesitation, but speaking for myself—who are now perhaps older than would be well for such an important assignment. Moreover, using senior judges on the court makes it a kind of second-class court, and it ought to be a class 1-A court. The class 1 court is the Supreme Court; Class 1-A is the National Court of Appeals. And I have considerable confidence that if this bill were adopted, that in due course—perhaps by the year 2000—we would have set it up as a regularly established, permanently staffed tribunal.

One last thing I would like to say about that. When one, as a lawyer, has a case before the Supreme Court of the United States, he knows the bench; he knows who the judges are. They, change from time to time. There have been changes in this country since 1789, including the personnel, but there is a very considerable element of continuity in the Supreme Court, and that affects the advice you give to clients, that affects the arguments you make to the Court, it affects the decisions which are made by the Court. And I think that we would be losing a considerable part of the potentiality for increased stability, which would decrease the amount of litigation, if we did not eventually come to a tribunal which has an established membership, changing only as required by the lapse of time.

I would be very happy to try to respond to any questions, and thank you very much.

Senator **Heflin**. Well, I believe we will go ahead and get the original statements from each of the panel members, and then we will go into a question period.

Professor Meador, would you—I am not now going by the service and various things; I am going by who is next to Dean Griswold.

You have a prepared statement, and it will be made a part of the record following your oral remarks.

Professor **Meador**. Thank you, Mr. Chairman.

It is an honor to be here, and I applaud this subcommittee, and especially Senator Heflin, for continuing to pursue this subject. I would like very much to see it pursued on to the point of legislation in the near future.

I endorse both objectives in S. 2035; that is to say, the creation of a new appellate court and the creation of a new Federal judicial position to be known as Chancellor. As I indicate in my prepared statement, I do have a number of different views—that is, views that differ from the bill—as to details. I share, though, the view of Dean Griswold, that I think the needs of the system are such that I would be prepared to take S. 2035 or any number of variations of it, in order to get a court established.

I have had about 10 years of participation in discussions and debates and programs on this subject, and for a long time I enjoyed the luxury of indecision. I did not have to decide what I really thought we ought to do; I could just listen and talk. Over the last year, though, the subject has been revived; in particular Senator Heflin's introduction of S. 1529 has caused me to refocus on it, get back into it, think more about it, and I have become persuaded that the time has come to create a new appellate forum.

I think there is a very high degree of sentiment throughout the profession, bench, and bar, and across both political parties, to that effect. The differences come, I think, in the composition of the court and the precise jurisdiction it should have. I would like to urge the subcommittee to concentrate its thoughts and energies on those questions hereafter. I think the subcommittee can proceed pretty much on the premise that the need is there. The question is how to satisfy it.

I do think that we have two problems here that have to be kept in mind, and they are different, although they overlap. One is the Supreme Court overload problem. That has become more evident, I believe, than it ever was before, as a result of speeches within the last couple of months by five members of the Court. The other problem is the one that Dean Griswold has described so well, and that is the inability of the system as a whole to render definitive, nationwide appellate decisions.

I would like to see the new appellate court designed to try to deal with both of those problems. I think that is possible. The feature of the new court, I think, around which there is the highest degree of agreement, and which dates from the Hruska Commission proposal in 1975, is the reference jurisdiction—to use the court, in a sense, as a kind of overflow chamber for the Supreme Court to decide, for example, statutory interpretation questions that the Supreme Court simply cannot reach because of its problems and its overload.

The other feature of the court as to which there is some sentiment, but less of a consensus, perhaps, is that it should have a measure of direct appellate jurisdiction. There are differing views about what that should be. I am very much attracted to the idea put forward in your November 1981 hearing and put forward on other occasions in the literature, to give this court direct appellate jurisdiction over cases coming from the State courts. What we do not have in those cases now is any kind of screening or buffering mechanism for the Supreme Court. Cases come now from the 50 State court systems and the District of Columbia and Puerto Rico, straight into the Supreme Court.

In cases coming from the U.S. courts of appeals to the Supreme Court, the Supreme Court has the benefit of an evaluation and refining process by article III judges. We do not have that when the cases come from the State courts. I think if those cases could be routed initially to this new appellate court, you would get the benefit of the judgment there of article III judges on the Federal questions that they contain, and that in itself would do a great deal to assist the Supreme Court in better identifying the truly important national issues in those cases. It could take up the few that really deserve Supreme Court treatment, and otherwise leave the rest to final resolution in the new appellate court.

About 1,225 cases, or roughly 28 percent of the Supreme Court filings, are coming now from the State courts. Combining jurisdiction over those cases with a reference jurisdiction would provide a mechanism that would be likely to work some real benefit for the system as a whole and for clarity and uniformity of Federal law.

I have become attracted to the idea that the new court ought to be composed of existing circuit judges sitting by designation, rather than permanent article III judgeships. The main point to be said in favor of permanent article III judgeships is the point that Dean Griswold just discussed, and that is stability. It is crucially important in my judgment that this new court have stability, continuity of membership, stability of composition in case after case, if it is going to achieve the purpose it is intended to achieve: Namely, bring about clarity, uniformity, and predictability in Federal law.

But I think there are some good arguments for using circuit judges sitting by designation. One is expense. If you use some senior judges—and I agree, not all should be senior, but certainly, there are a few able senior judges that can be used—you do not have to create new judgeships. Some people are worried about handing to any one President at one time the opportunity to fill an entire new appellate court, an important court of this kind. You would avoid that problem. We have a seasoned pool of judicial manpower that could be tapped because of their known abilities. Another argument for using senior circuit judges is that if this arrangement does not work out well, or for some reason or other there is a desire in the years ahead to discontinue it, it could be easily discontinued. But a final argument for using circuit judges to me is very persuasive, and that is that if the court is to achieve the purpose of settling Federal law issues without simply becoming a routine way station on the way to the Supreme Court, this new court has got to mirror to a very high degree the jurisprudential stance of the Supreme Court itself. If we let the new court be composed of, say, nine circuit judges sitting by designation, and give the Supreme Court a hand in selecting those judges, sitting for terms long enough to give stability, we have a forum that is most likely to mirror the Supreme Court itself. We do not want to set up a new court that will go off on some jurisprudential avenues of its own. It has got to stick very closely to what the Supreme Court would do, case by case. All of this, I set out in detail in my statement.

The other feature of S. 2035 is the creation of a chancellor. I endorse the feature of that that would make the chancellor in effect a chief administrative officer for the Federal judicial system.

I do have some reluctance, though, about linking this new position to the new appellate court. It seems to me that if we are going to give the system what it now needs badly, and that is additional administrative manpower at the top, we do not want to combine this new, official position with the very important job of presiding over the new court and participating in its decisions. I would tend to favor the creation of a chancellorship drawn from the ranks of existing article III judges, but whose duties would be exclusively administrative, working under the Chief Justice.

One last little point—and I do not want to make too much about names and titles—but I have become rather drawn lately to the title of "Inter-Circuit Court of Appeals" for the new forum. I have been persuaded by the writings of Leo Levin, Director of the Federal Judicial Center, and some discussions at the annual interbranch seminars at Williamsburg, that the concept of an inter-circuit court of appeals is an attractive one. I think the title may more accurately reflect the nature of the court, if it is to be composed of circuit judges sitting by assignment, and a very important part of its job will simply be monitoring, so to speak, and riding herd over the existing courts of appeals decisions. But I would not want to put too much on the title either of the chancellor or the new appellate court. I think the more important point is to bring about these new arrangements that would help the system.

Thank you very much, Mr. Chairman. I will be glad to answer any questions.

Senator **Heflin**. Thank you, Dean Meador.

Judge Bork, we are delighted to have you with us, and we would be glad to hear from you now.

Judge **Bork**. Thank you, Mr. Chairman.

It is with some trepidation that I disagree with Dean Griswold and Professor Meador, but as I understand this proposal, it has two objectives. One is to resolve conflicts between the circuits that presently go unresolved, and the other is to address the overload problem in the Federal judicial system, particularly the Supreme Court.

In my view, one of those problems is not very real, and the other problem this proposal would make worse. It is for that reason that I do not think this is the way to solve the problem.

The idea is to double the appellate capacity of the United States in order to remove unresolved conflicts from the system. So far as I can tell, there are not any really worrisome unresolved conflicts in the system. The examples that are usually given are patent cases and tax cases. The patent situation is now to be remedied with this new court of appeals. There is no reason why tax litigation could not be funneled into a tax court of appeals and resolve that problem.

Other than that, I know of no need to produce national uniformity because there are important unresolved conflicts out there.

As to the Supreme Court's workload, and the workload—by the way, this would not really help the workload of the courts of appeals, where the situation is now very bad—as to the Supreme Court's workload, I think this will make the situation worse. A case would go to the Supreme Court on a petition for certiorari. The Court now has the duty to decide to take the case or not to take the case; two options. This will give the Court four options. That is, it may turn down certiorari, it may grant certiorari and take the case itself, or it may be decided to refer it to the court of appeals, and then it may be decided to take it back after this new court of appeals decides the case. I think you ought to examine what this will require of the Supreme Court. In deciding whether or not to send this case to the new court of appeals or take it itself, the Supreme Court will have to dig very deeply into the case and understand the issues and their ramifications. That means they will have very nearly decided the case before they decide whether it is appropriate for the Supreme Court or for the new court of appeals. I think that is going to increase their workload. Then they will send the case down to this National Court of Appeals. I do not think that Professor Meador's objective can be realized—that is, that you will get what is, in effect, a perfect reflection of the Supreme Court on this court of appeals. The Supreme Court itself lacks consensus, and its results are variable, so that it is quite likely that the Supreme Court or four members of it would be very unhappy with various decisions of the National Court of Appeals, or with the dicta, or with the rationale advanced. Since that is supposed to be a binding national precedent, the Supreme Court will feel forced to take that case back up and decide it itself, in a way that it does not now feel forced to take a case from this circuit or the fourth circuit or elsewhere.

In a lot of cases, what you are going to do, aside from increasing the workload of the Supreme Court and increasing uncertainty, is to provide four tiers of courts for litigants. Litigation is already very expensive and delayed, and this is going to add greatly to the delay and expense in the cases that go up.

I would suggest that there ought to be a national tax court of appeals. There is now a national patent court of appeals. The only solution to the workload problem is a drastic pruning of jurisdiction for all Federal courts. I will not rehearse the proposals we made some time ago, but the Department of Justice once made recommendations—you have the report, I believe—about what jurisdiction should be cut and how it should be cut. That, I think, is the only solution to the problem which is very real.

Thank you.

Senator HEFLIN. Well, thank you, gentlemen. We appreciate your testimony.

First, let me inquire of you about, in effect, a surrogate position for nondecisionmaking for the Chief Justice—we have labeled it the chancellor—give some thought to this issue, realizing it did have an equity historical connotation, but under the definition, I do not remember specifically, in the dictionary, the word chancellor is more of an all-encompassing thing. We have many chancellors of universities and other things, and the title is really immaterial, whether it be called the chief justice, or the chief judge, or the chief magistrate, or whatever you might want to label it.

The Chief Justice of the United States, Warren Burger, has on several occasions, publicly and in private to me, indicated the need for a person with stature to take care of many nondecisionmaking responsibilities that are imposed on the Chief Justice and to help him to assist in that. In many courts today, you have the concept of an administrative judge, which gives stature to many of the problems of the judiciary, separating this from the court of appeals. What is your feeling on whether or not there should be some type of a judicial surrogate for the Chief Justice?

Mr. GRISWOLD. Well, Senator, I led the symposium, so I will try to make the first effort on that. I think there is a very real need. There are many functions which can only be performed by a person who holds a commission in the judiciary. The one that I think of particularly is the designation of judges to sit in other courts. The Chief Justice can designate a judge of one circuit to sit in another circuit, and that is very frequently done—some of us think, rather too frequently. The designation of judges to sit within the same circuit, I understand, is assigned to the chief judge of that circuit. But there are other administrative functions which are time consuming and which, over a period of 100 years have one by one been assigned to the Chief Justice either directly or through the judicial conference over which the Chief Justice presides.

The difficulty has been that it is not easy to think of a person who would like to be merely an administrative judge and not, shall

I say, a real judge, not exercising judicial power with respect to specific cases and controversies. And it has been our inability to resolve that problem which has simply left all these assignments to the Chief Justice.

That difficulty arising, it seems to me that it would make a good deal of sense to find a way to divide the chores between two real judges, and the concept in S. 2035 that the officer there designated as chancellor should at least share in the administrative responsibilities is a step toward resolving that problem, and as I have not seen any other steps, it seems to me to be a step forward.

Senator **HEFLIN**. Professor Meador.

Professor **MEADOR**. When you think about the job of the Chief Justice, it seems to me clear that something has to be done. He is one of the nine justices on the Supreme Court. If you think about the work of the other eight, and ask yourself, "Is any one of the other eight underoccupied any part of the day?" I think the answer is no; it is a very full-time, demanding job, calling for weekend work, night work, simply to be a judge, doing judicial work, deciding the cases that come to the Supreme Court. The Chief Justice has to do all that each of the other eight does, but in addition, he has to be the systemwide administrator of the entire nationwide Federal judicial system, which in itself is a very substantial job and has grown enormously with the growth of the system over the last 20 or 30 years.

I rather like the idea of creating a new official position. I think Dean Griswold has a very good point about getting the right kind of person out of the ranks of the judiciary who wants to be a real judge. All three of us here come out of the academic world, and I think there may be some analogy here to the kind of person you would get to be dean of a law school. There are a lot of law faculty members that do not want to be deans, but there are some who do, and you can get some very able people, as evidenced by Dean Griswold himself, who are willing to take that on.

I would meet the problem by authorizing the chancellor to sit from time to time, to keep his hand in as a real judge, and let him sit here, there, and yonder around the country on designation of the Chief Justice. But his primary function would be that of administrator for a term—I would suggest 5 years. I would like to see him clothed with the authority to do whatever the Chief Justice would delegate him to do, other than participating in the Supreme Court's work itself, but also, I would like to see the statute give him some specific authority straightaway. I suggested that in my statement. Incidentally, in my written statement, I have taken the rather unusual and perhaps somewhat presumptuous step of including at the end some statutory provisions as a way simply of summarizing some of my thoughts as to how the chancellor's job ought to be structured—listing certain duties, such as the authority to make intercircuit assignments of judges, the authority and responsibility of presiding over the Judicial Conference, appointing its committees and carrying out its decisions. Those are the biggest, I believe, administrative drains on the Chief Justice's time. Communicating with Congress would be another—testifying where appropriate before committees about the needs of the courts, and that kind of interbranch communicating role.

I might finally say that the White-Burkett-Miller Center of Public Affairs at the University of Virginia is having a conference on October 15 on this very subject—the role of the Chief Justice of the United States, the difficulties that may now beset it, and what might be done about it. A report will be published after that conference, and I will be glad to supply copies to the subcommittee.

Senator HEFLIN. Judge Bork.

Judge BORK. Well, Mr. Chairman, I think the problem is a very real one, but I would like to see it divorced from the idea of a National Court of Appeals. It seems to me those are two separate problems. And I agree that it should be an article III judge who does this for the Chief Justice.

It seems to me the problem might be addressed more simply, by a statute giving the Chief Justice some power to designate another Federal judge for this position, and that judge would continue to sit part time and do administrative work part time, sharing the administrative duties with the Chief Justice. I think that would solve the problem without the need for this solution.

Senator HEFLIN. Well, if you were to assume—we understand your position, of course, on the concept of intercircuit panels, or maybe the National Court of Appeals—I am not sure—or maybe an exit court as opposed to an entry court—but assuming that this concept were adopted in the present day of financial restraint, do you see that a person or a position like that could serve both functions without causing problems?

Judge BORK. It certainly could, Senator, but those are two very different functions, and the Chief Justice might prefer one person as chancellor and a different person as the administrator. And if we are to have a National Court of Appeals, perhaps it might be better to let the Chief Justice use the chancellor or any other Federal judge he wanted for this position as administrative help.

Senator HEFLIN. Let me go next to the issue of exit versus entry. You go back to the Freund proposal, which was to create a National Court of Appeals. Cases would go through it before going to the Supreme Court. And one of your objections is that if you go through, as proposed here, an exit court to the intercircuit—or, to the National Court of Appeals; maybe we best just refer to that, since it is simpler to use those words, and then we will worry about how it is organized, whether permanently or how—but in regards to this, what are your positions in regards, really, I suppose, to the basic concept of the Freund proposal as opposed to the Hruska proposal—Hruska being a court that the Supreme Court delegated to the National Court of Appeals the cases or the decision to exercise its discretion as to whether or not it would hear it. Justice Stevens has raised this issue and prefers the entry court, rather than the exit court. So with that in mind, please give us your comments on this.

Maybe we will start with Judge Bork now.

Judge BORK. Well, the entry court is proposed by Professor Freund's committee. I think one problem with it would be that nobody would want to serve on it. The judge would become sort of a glorified law clerk and read petitions for certiorari and then send up 400 of them to the Supreme Court. That is just a paper processing job, and I think the competition to stay away from being on that court would be severe.

There is, of course, the problem, too, that some members of the Supreme Court would not be very happy with having their range of choice limited in that way.

Senator HEFLIN. Then I suppose you do not agree with the Freund proposal?

Judge BORK. No, I am not usually opposed to everything that comes up in a single morning, Senator, but I am today.

Senator HEFLIN. In other words, you are against any form of National Court of Appeals?

Judge BORK. I am, indeed.

Senator HEFLIN. All right, sir.

Professor Meador, do you want to express on the entrance and exit?

Professor MEADOR. Well, I think I share the view of Judge Bork about the Freund committee proposal. In addition, we learned from that report a valuable lesson, and that is that there is serious, deep, and widespread opposition in the bench and bar to proposals that would shut off the Supreme Court absolutely from any cases coming up where there are Federal questions from the courts of appeals or the State courts. Justice Stevens, of course, has taken the Freund committee idea; as someone said, it is "Freund committee in spades." Instead of just screening out and passing on a reduced group of cases, he would have a court below absolutely decide what the Supreme Court is to deal with.

I think Justice Brennan's speech to the third circuit recently makes a very telling response to that, that the task of the Supreme Court in selecting its docket is inseparable from its task of monitoring the jurisprudence of the Federal system, so to speak, and I tend to share that view, so I would not favor a court that would absolutely cut off the intake to the Supreme Court.

Senator HEFLIN. Dean Griswold.

Mr. GRISWOLD. Well, I would only add to that, that it seems to me that—I hate to use the dire threat—but that such a court would be unconstitutional. The Constitution provides for one Supreme Court, and if you have another court which can say that the Supreme Court cannot hear this case, even if it wants to, I would have grave doubts about its constitutionality.

Quite apart from that, though, it seems to me that it would cut off a potentiality for development which has been very important in our jurisprudential history. I think it very unlikely, for example, that the *Gideon* case would ever have been passed by such a court. That was a routine case, the law had been established for a long time; it was no different than a lot of other cases, so the application should be denied. If the consequence of that was that that problem could never have been considered by the Supreme Court, it seems to me it would be very unfortunate.

So I favor an exit court, not an entry court, though I still feel very strongly that we need a considerable increase in our nationwide appellate capacity

Senator HEFLIN. We have got a vote on, and I am going to have to go just briefly. But Judge Bork, I have had this pointed out in these rather graphic terms, that in 1890 the Supreme Court had about 500 cases, 400 or 500 cases, that were performed, and to relieve its workload and to give it help, it created nine circuit courts of appeal. After the nine circuit courts of appeal were established and functioning, the next year, I believe, about 1892, there were decided by the U.S. Supreme Court 275 cases—some of those, summarily, some by written opinion, full-blown argued—that if you trace the history of the Supreme Court from that time forward, those numbers, 275, are almost magical that practically every year and up to the present time, the Supreme Court decides 275 cases, approximately—sometimes, 279—seldom, I do not think, it has been over 300. But it would indicate that the capacity of the Supreme Court to select is about 275, with approximately 30 percent of those being summarily decided, the rest by full-blown arguments and hearings. In the meantime, the cases that are filed have now reached about 5,000, and the Supreme Court is granting or hearing somewhere in the neighborhood of 5 to 6 percent of the cases that are filed, the argument being made that there are thousands of cases that are frivolous; but there are still hundreds of cases that cry out for consideration.

Now, if this trend were to continue in the future—and as maybe Judge Clifford Wallace has indicated, if litigation increases as it has in the last 6 or 7 years into the future—within a brief period of time, maybe 15 years, we may have to double the number of judges in the district courts and the courts of appeals. Assuming that this trend goes, and that we are down to a situation where the Supreme Court is taking only 3 percent, do you foresee a need for some type of relief for the Supreme Court, and if so, what?

Now, with that, I am going to have to leave, and I am going to ask Mr. Velde to continue the questioning until I get back, if you can, or else recess until I get back.

Mr. VELDE. This panel consists of distinguished student observers and practitioners before the Supreme Court. This morning's paper carries a news account of a speech made by Justice Rehnquist at the University of Kentucky, I believe. He became the sixth Justice to speak out publicly about the problems of the growing caseload and workload of the Supreme Court.

I would address the following question to the members of the panel. This statement and the others that preceded it seem to be somewhat unusual in terms of Justices speaking out publicly on such a matter. Is it not symptomatic of the problem which the bill before this subcommittee addresses, and if this remedy is not, perhaps, the only solution, is there not a real problem here which must be addressed in some fashion?

Would any of you care to respond?

Judge BORK. Let me try it. There is a terrible problem here which must be addressed in some fashion, insofar as the problem relates to the Supreme Court. And, as we pointed out, the Supreme Court decides only about 7 percent of the cases that come into the system, so that the quality of justice for 93 percent of the cases depends upon the courts of appeals, and they are badly overloaded. I do not think it is simply a Supreme Court problem. It is also a district court problem and a court of appeals problem.

So far as the Supreme Court is concerned, part of their difficulty is self-inflicted. They have, over a period of years, taken on types of cases which the Supreme Court previously did not do and invited a great deal of litigation that previously was not there. But aside from that, this particular proposal, as I have suggested, will not alleviate the problem of Supreme Court overload. It will involve the Supreme Court in many more complex decisions about who should decide cases, it or the National Court of Appeals, and whether the National Court of Appeals has decided in a way that the Supreme Court can live with. So I think this adds to the Supreme Court's workload rather than alleviating it.

At the moment, I do not know what can be done for the Supreme Court. Drastic pruning of jurisdiction, diversity jurisdiction, creation of administrative law courts, and so forth, would help the other courts, but the Supreme Court probably can only be helped by this bill which would make all of its jurisdiction discretionary, and perhaps by a little self-restraint on its part as to what categories of litigation it will consider and what categories of litigation it will invite.

Mr. **Velde**. Professor Meador, what was your reaction to the speeches by the several Justices?

Professor **Meador**. Well, I have not read the speech by Justice Rehnquist. I have read the others. And as you say, he now becomes the sixth to speak out on it. I think we can easily make it seven, because the Chief Justice has been saying these things and continues to say them, all along.

The points that Judge Bork makes here, I think, are well taken, and that is to say, it may be that creating a new court of this kind will not directly help the Supreme Court much. There are several things I would say in answer to that. One is that we do not really know. We are dealing here with a number of unknowns. It will depend on a variety of factors and variables. My own view is, though, that the problems are sufficiently large and serious that we ought to try something, and to me, the creation of a new appellate court, properly constituted and properly run, is worth trying. I would say that if everyone would be more comfortable with it, a sunset provision might even be inserted in the legislation. I would say 6 years would be about a right time for that. I would hate to see it any less, because I think any less would not give the new court a fair trial run. That is another reason for constituting it with a group of seven or nine circuit judges sitting by designation. It could be easily dismantled after a period of a few years if it were not achieving the intended purpose.

Now, personally, I favor doing everything that has been mentioned at this table this morning. It is my view that all of these things in combination in the long run may be necessary to help the system. I think the volume of business is such, presently and as far as we can predict for the future, that we are going to need all of these things. I am much attracted to the idea that Dean Griswold has voiced, of creating other courts of appeals with what I call subject matter jurisdiction, topical jurisdiction, along the line of the U.S. Court of Appeals for the Federal Circuit. I think that deserves serious study and thought. Tax cases are attractive prospects for such treatment. I think the idea of possibly a set of administrative courts of some kind, as Judge Bork mentioned, is well worth looking at. Diversity jurisdiction ought to be cut back. The Supreme

Court ought to be given complete discretion over its docket. All these things need doing, but it is my view that some of those, at least, are much further down the road. They have not had the kind of attention and study that this appellate court proposal has had now for 10 years. It has had a great deal of thought and discussion. I think there is a fairly good measure of consensus around it. Nothing will ever be unanimously endorsed, but it is worth a try, and I think we are at a point where we need to do something, even if it turns out not to work, but do it in a way that gives it a good chance of working, and in a way that can be easily discontinued if it turns out in fact not to do what it ought to do.

Mr. VELDE. Professor Meador, I am intrigued by your suggestion that perhaps this might be tried out as an experiment with the sunset provision. This sounds very similar to a proposal that came from the Williamsburg Conference of 2 years ago, for an intercircuit tribunal. Congressman Kastenmeier in the House has introduced such a bill. There is no companion bill pending in the Senate. Would a temporary intercircuit tribunal to be appointed by the Chief Justice, to handle such matters as may be referred by the Court or the Chief Justice, be a worthwhile experiment to see whether or not the court of appeals over the long run would be useful?

Professor MEADOR. In my judgment, it would be, if it is properly constituted. By properly constituted, I would mean that the court not be larger than nine judges, so that all judges could sit on all decisions on the merits. I think the court should sit en banc on every decision on the merits, and there should be continuity in its membership. There should be initial assignments for a significant period of years. I would not favor the construction of the court that is embodied in Representative Kastenmeier's bill, which would be a large pool of circuit judges, sitting in constantly fluctuating panels. I think the ever-shifting panel system we have now in the courts of appeals is part of our problem. We have a kind of judicial roulette system at the appellate level, that makes law less predictable and less stable, and I think this court above all else should have a stable membership and sit en banc. But given that composition, I would agree very much that it is an experiment worth trying, and a sunset provision, I think, would be in order there.

Mr. VELDE. Dean Griswold, what was your observation about these recent——

Mr. GRISWOLD. I think that I would disagree with Judge Bork when he says that this would not reduce the load of the Supreme Court, but would indeed increase it. I think he ignores the effect on the number of cases which would come up through the system if we could, somehow or other, devise a system which would have more stability and more predictability.

Now, we have a nice instance coming up next Friday, October 1. All court of appeals decisions in patent cases will be made by the Court of Appeals for the Federal Circuit. My expectation is that there will be very few petitions for certiorari to review those decisions, particularly if, in the first year, the Supreme Court shows that by and large it is not going to accept review of those cases. There will be an occasional case, like maybe the patent on the telephone 100 years ago, where the Supreme Court will think it ought to take care of it. A great many controversies involving infringement are essentially factual controversies. And I think it will soon become apparent to the patent bar that the chances of getting a petition granted to review a decision of the Court of Appeals for the Federal Circuit are so small that it is not worth taking that chance unless the case is extraordinarily clear. For example, there are not very many petitions from TECA. There are some. I think only one or two have been granted in years, so that it has not increased the burden on the Supreme Court.

If we could find a way which, with respect to essentially statutory construction questions, would give a final decision at a lower level than the Supreme Court, I think we would find in the course of time that a number of cases being taken to the Supreme Court would be sharply reduced.

More than that, it would just be a better system. Practicing law in the United States is a very different thing from practicing law in England or, indeed, even in Canada, where the practicing lawyer can advise the client as to what the law is within very wide range. There are areas where it is uncertain and where you may have to litigate. But practically no case comes to an American lawyer where he can say, "No, you oughtn't to do that, because the cases are clear against you." You say now, "Well, there are some cases against you, and there are arguments the other way, and there are dicta here, and you would have a reasonably good chance of going ahead, and if you do, maybe you can settle it, anyhow." And that is a large element in American law practice. I would like to see it reduced. I think it could be reduced if we could find a way to bring ourselves to adopt a system which would provide greater stability and predictability, and I think that this bill would be a useful step in that direction, though I would like to go further.

Mr. VELDE. It is my understanding that the Judicial Conference yesterday issued a press release and made certain recommendations with respect to additional positions. At this time, I would like to call a representative of the Administrative Office, Mr. Weller, to receive questions on behalf of Senator Dole, and hopefully, to submit materials for the record. Chairman Dole will not be able to be here this morning; however, he and also Senator Boschwitz have submitted prepared statements, which will be made part of the record.

But, Mr. Weller, I would submit to you these questions on behalf of Senator Dole, and if you could supply the materials for the record, or any other comments you wish to make, you are welcome. [Handing document to Mr. Weller.]

I know Chairman Heflin wants to pose additional questions to the panel, so I am not asking that you be excused. I have no further questions for the panel.

[The prepared statements of Senators Dole and Boschwitz follow:]

PREPARED STATEMENT OF SENATOR ROBERT DOLE

Last Tuesday, the Senate Judiciary Committee voted to favorably report the omnibus judgeship bill, which would create, an additional 45 district court and circuit court judgeships. This bill, however, is based on recommendations submitted by the Judicial Conference on March 5, 1981, which in turn, are based on the conference's 1979 biennial survey of judgeship needs. During the full committee markup of the omnibus judgeship bill, it was pointed out that the Conference has now completed its 1981 biennial survey. The committee members generally agreed that if this more recent survey revealed a need for still more judgeships, efforts should be made to address these additional needs in this Congress. As chairman of the Subcommittee on Courts, I promised to promptly hold hearings on the 1981 survey recommendations and make every effort to process the appropriate legislation.

Last Wednesday, the conference met to formally approve its 1981 survey recommendation. Bill Weller, the director of legislative affairs for the Conference will be explaining these recommendations of today's hearings and providing the supporting documentation for the record. I want to apologize to Mr. Weller for being unable to attend today's hearings and personnally receive his testimony. However, I thank him for coming, and assure him that his testimony will receive careful consideration by the subcommittee.

Prepared Statement of Senator Rudy Boschwitz

Mr. Chairman, I commend you for holding these hearings so promptly and appreciate the opportunity to present my views to the subcommittee.

As you know Public Law 95-486 created two additional district judgeships for Minnesota. That law also provides, however, that the first vacancy occurring 5 or more years after its effective date would not be filled. Thus, the first vacancy occurring after November 1983 would leave Minnesota with a total of five federal judgeships.

I believe that now is the time to make the judgeship permanent—not a year from now when there is a greater urgency. The facts and circumstances in Minnesota justify making the judgeship permanent. In 1981, the District of Minnesota had 420 filings per judgeship and 368 weighted filings per judgeship. If the temporary judgeship did not exist, there would have been 442 weighted filings per judgeship. As of March 31, 1982, the most current statistics show 518 filings per judgeship and about 450 weighted filings per judgeship. These statistics by themselves support making the judgeship permanent.

But these statistics do not tell the full story. Judge Earl R. Larson is currently on senior status and thus is not included in calculating the filings per judgeship—even though he is carrying a full caseload. When he goes inactive at the end of this year, the workload of the six active judges will, in fact, increase. The expiration of the temporary judgeship would further aggravate the situation.

I have been in contact with the Honorable Donald P. Lay, chief judge of the Eighth Circuit Court of Appeals, Judge Donald D. Alsop and other district judges who support making the temporary judgeship permanent. I have also been in contact with the Administrative Office of the U.S. Courts and the eighth circuit's representatives to the Judicial Conference. It is my understanding that the Judicial Conference has recommended that the temporary judgeship be made permanent.

In conclusion, I believe that the caseload in Minnesota, particularly when Judge Larson goes on inactive status, fully warrants making the judgeship permanent. I respectfully request that the Judiciary Committee concur and offer my assistance in achieving this goal.

STATEMENT OF WILLIAM JAMES WELLER, LEGISLATIVE AFFAIRS OFFICER OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. Weller. Mr. Velde, I can supply for the hearing record now a copy of the press release issued yesterday that you have requested, and a copy of the Court Administration Committee report materials relevant to recommendations for appellate and district court judicial positions.

The Court Administration Committee did not play any role in the evaluation of additional bankruptcy judicial positions. The work product is that of the Conference's Committee on the Administration of the Bankruptcy Court system. I will try to obtain permission from the committee chairman to have that document released.

[Senator Heflin resumed the Chair.]

Mr. **Velde**. As I understand the press release as it is summarized in this morning's paper, the Judicial Conference also authorized the promulgation of an interim set of rules to deal with the *Northern Pipeline* decision. Would it be possible to also submit for the record those set of rules?

Mr. **Weller**. Yes, but I do not have it with me now. I can get it to you later today.

Mr. **Velde**. All right.

[Subsequent to the hearing, Mr. Weller submitted the following material for the record:]

[Press release]

September 23, 1982

JUDICIAL CONFERENCE OF THE UNITED STATES

The Judicial Conference of the United States today ended its semi-annual conference in Washington. The following actions were taken:

The Conference unanimously approved distribution to all District Courts and Circuit Councils of a proposed model rule, which will permit the bankruptcy court system -- absent a stay of the Supreme Court holding refered to hereafter -- to continue functioning without disruption should Congress be unable to enact currently pending legislation responding to the Supreme Court's decision in Northern Pipeline Construction Company v. Marathon Pipeline Company.

Under the Conference's resolution, all District Courts are being urged to adopt the rule forthwith, to become effective October 5.

Under Section 332 of Title 28, USC, as amended by Congress to years ago, Circuit Councils are authorized to issue binding administrative orders for the conduct of all judicial business arising within judicial circuits. The presiding officers of all judicial councils were present at the meeting of the Conference.

The Judicial Conference also approved amendments to the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, including new Bankruptcy Rules to govern procedures in bankruptcy cases under the Bankruptcy Code of 1978. Proposed rules and amendments will be transmitted to the Supreme Court for its consideration, with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

Against the background of a continued rise in case filings and multiple statutes increasing federal court jurisdiction, the Conference concluded its second biennial survey of judgeship needs since the last Congressional authorization of new judges, and authorized a request to Congress for 22 new judges for the courts of appeals, and 43 new judgeships for district courts, 8 temporary and conversion of

2 existing temporary judgeships to permanent. These numbers include a pending request initiated in 1980, following the first biennial survey of judgeship needs.

The Conference also voted to recommend to Congress and the President that a total of at least 300 Article I bankruptcy judicial positions be created by April 1, 1984. This represents an increase of 78 judges over the present strength. The Conference acted pursuant to the Bankruptcy Reform Act of 1978 which requires it make a recommendation by January of next year.

Under the 1978 act, all bankruptcy judicial positions must be occupied by individuals who have been nominated by the President and confirmed by the Senate. The 200 individuals currently sitting as bankruptcy judges were not appointed under that process but were in place when the reform act was passed.

As required by and shortly after enactment of the law, the Director of the Administrative Office of the U. S. Courts conducted studies and surveys which resulted in recommendations that were reviewed by the Director's Advisory Committee of bankruptcy judges, the judicial councils of the circuits, and the Judicial Conference Committee on the Administration of the Bankruptcy System. During the course of the surveys, each bankruptcy judge was interviewed and separately asked his or her views on the number of judges needed to efficiently and effectively process the workload after April 1, 1984. The bankruptcy judges estimated that from 285 to 325 judges would be needed. The Director determined to recommend 299, although his bankruptcy judge advisory committee concluded that 303 would be required.

The Judicial Conference concluded that approximately 300 judges would be needed, but agreed to determine the final figure after additional study by the committee.

The Judicial Conference of the United States is the policy-making body for the administration of the United States Courts. The Chief Justice of the United States is the Presiding Officer. The membership of the Conference is comprised of: the Chief Judge of each of the twelve circuits; the Chief Judges of the Court of Customs and Patent Appeals, and the Court of Claims; plus one District Judge representative from each circuit who is elected by the circuit and district judges of the circuit he or she represents, for a term of three years on the Conference.

The Judicial Conference is required by Title 28, United States Code, section 331, to meet annually, and at such other times as may be called by the Chief Justice. Customarily, the Conference meets twice each year, in the spring and fall.

JUDICIAL CONFERENCE OF THE UNITED STATES

SEPTEMBER 1982

Honorable Warren E. Burger, Chief Justice	Presiding
Chief Judge Frank M. Coffin	First Circuit
Judge W. Arthur Garrity, Jr.	Massachusetts
Chief Judge Wilfred Feinberg	Second Circuit
Chief Judge Constance B. Motley	New York (Southern)
Chief Judge Collins J. Seitz	Third Circuit
Chief Judge Gerald J. Weber	Pennsylvania (Western)
Chief Judge Harrison L. Winter	Fourth Circuit
Judge Robert R. Merhige, Jr.	Virginia (Eastern)
Chief Judge Charles Clark	Fifth Circuit
Chief Judge John V. Singleton	Texas (Southern)
Chief Judge George C. Edwards, Jr.	Sixth Circuit
Chief Judge Frank J. Battisti	Ohio (Northern)
Chief Judge Walter J. Cummings	Seventh Circuit
Chief Judge John W. Reynolds	Wisconsin (Eastern)
Chief Judge Donald P. Lay	Eighth Circuit
Judge Albert G. Schatz	Nebraska
Chief Judge James R. Browning	Ninth Circuit
Judge Manuel L. Real	California (Central)
Chief Judge Oliver Seth	Tenth Circuit
Chief Judge Luther B. Eubanks	Oklahoma (Western)
Chief Judge John C. Godbold	Eleventh Circuit
Judge William C. O'Kelley	Georgia (Northern)
Chief Judge Spottswood W. Robinson, III	District of Columbia Circuit
Chief Judge Aubrey Robinson	District of Columbia
Chief Judge Daniel M. Friedman	Court of Claims
Chief Judge Howard T. Markey	Court of Customs and Patent Appeals

RESOLUTION OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

RESOLVED:

That the Conference request the Director to provide each circuit with a proposed rule to take effect October 5, 1982 in the absence of congressional action or extension of the stay, which rule will permit the bankruptcy system to continue without disruption in reliance upon jurisdictional grants remaining in the law as limited by Northern Pipeline Construction Co. v. Marathon Pipe Line Co. et al.

September 23, 1982

TO: Members of the Judicial Conference

The attached Rule and position paper is submitted herewith pursuant to a resolution adopted by the Conference requesting the Director to provide each circuit with a proposed rule to take effect in the absence of congressional action or an extension of the stay in Northern Pipeline Construction Co. v. Marathon Pipe Line Co. et al.

Robert E. DeMascio
Chairman
Committee on the Administration
of the Bankruptcy System

Attachments

Sample Order

Acting pursuant to the authority vested in the Judicial Council by 28 U.S.C. §332(d), the Judicial Council of the ________ circuit concludes that the uniform effective and expeditious administration of justice within this circuit requires that the attached rule for the administration of the bankruptcy system in this circuit be adopted by the district courts of this circuit pursuant to 11 U.S.C. §105, and it is so ordered.

RULE

(a) Emergency Resolution

The purpose of this rule is to convey to the bankruptcy judges of this district authority to act in bankruptcy cases and proceedings until the Congress enacts appropriate remedial legislation in response to the Supreme Court's decision in Northern Pipeline Construction Co. v. Marathon Pipe Line, Co., ______ U.S. ______, 102 S. Ct. 2858 (1982), or until March 31, 1984, whichever first occurs.

The judges of the district court find that exceptional circumstances exist. These circumstances include: (1) the unanticipated unconstitutionality of the grant of power to bankruptcy judges in section 241(a) of the Bankruptcy Reform Act of 1978; (2) the clear intent of the Congress to refer bankruptcy matters to bankruptcy judges; (3) the specialized expertise necessary to the determination of bankruptcy matters; and (4) the administrative difficulty of the district courts' assuming the existing bankruptcy caseload on short notice.

Therefore, pursuant to 11 U.S.C. sec. 105, sections 404 and 405 of the Bankruptcy Act of 1978, Rules 53 and 83 of the Federal Rules of Civil Procedure, and Rules 513 and 927 of the Bankruptcy Rules, the orderly conduct of the business of the court requires this referral of bankruptcy cases to the bankruptcy judges.

(b) Reference to Bankruptcy Judges

(1) All cases under Title 11 and all civil proceedings arising in or related to cases under Title 11 are referred to the bankruptcy judges of this district.

(2) The reference to a bankruptcy judge may be withdrawn by the district court on its own motion or on timely motion by a party. A motion for withdrawal of reference shall not stay any bankruptcy matter pending before a bankruptcy judge unless a specific stay is issued by the district court. If a reference is withdrawn, the district court may retain the entire matter, may refer part of the matter back to the bankruptcy judge, or may refer the entire matter back to the bankruptcy judge with instructions specifying the powers and functions that the bankruptcy judge may exercise. Any matter in which the reference is withdrawn shall be reassigned to a district judge in accordance with the court's usual system for assigning civil cases.

(c) Powers of Bankruptcy Judges and District Court Review

(1) The bankruptcy judges may perform in referred bankruptcy matters all acts and duties necessary for the handling of those matters and may conduct all proceedings except:

(A) a proceeding to enjoin a court;

(B) a proceeding to punish a criminal contempt;

(C) an appeal from a judgment, order, decree, or decision of a United States bankruptcy judge; or

(D) jury trials.

(2) Except as provided in (3), the orders and judgments of bankruptcy judges shall be effective upon entry by the clerk, unless stayed by the bankruptcy judge or the district court.

(3) In civil proceedings related to cases under Title 11 but not arising in or under Title 11, or wherever otherwise constitutionally required, judgments as defined in Rule 54(a) of the Federal Rules of Civil Procedure that would be appealable if rendered by a district judge and that do not result from a stipulation among the parties, shall not be effective and shall not be entered until the judgment has been signed by a district judge. In such proceedings, the bankruptcy judge shall submit findings, conclusions, and a proposed judgment to the district judge.

(4) Objections to an order or judgment entered under paragraph (2), or a proposed judgment lodged under paragraph (3) must be filed within 10 days after entry or lodgment thereof by the clerk. The time for filing objections may, for cause, be shortened by the bankruptcy judge or the district court.

(5) (A) A district judge shall review:

- (i) an order or judgment entered under paragraph (2) if a timely objection has been filed;
- (ii) an order or judgment entered under paragraph (2) if the bankruptcy judge certifies that circumstances require that the order or judgment be approved by a district judge, whether or not the matter was controverted before the bankruptcy judge or any objection was filed; and
- (iii) a proposed judgment lodged under paragraph (3), whether or not any objection has been filed.

(B) In conducting review, the district judge may hold a hearing and may receive such evidence as he deems appropriate and may accept, reject, or modify, in whole or in part, the order or judgment of the bankruptcy judge, and need give no deference to the findings of the bankruptcy judge. At the conclusion of the review, the district judge shall enter an appropriate order or judgment.

(6) When the bankruptcy judge certifies that circumstances require immediate review by a district judge of any matter subject to review under paragraph (5), the district judge shall review the matter and enter an order or judgment as soon as possible.

(d) Effective Date and Pending Cases

This rule shall become effective October 5, 1982, and shall apply to all cases not governed by the Bankruptcy Act of 1898, as amended. Any bankruptcy matters pending on October 5, 1982 before a bankruptcy judge shall be deemed referred to that judge.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

September 27, 1982

MEMORANDUM TO ALL: JUDGES, UNITED STATES COURTS OF APPEAL
JUDGES, UNITED STATES DISTRICT COURTS
JUDGES, UNITED STATES BANKRUPTCY COURTS
CLERKS, UNITED STATES BANKRUPTCY COURTS

SUBJECT: The Bankruptcy Court System after October 4, 1982 in Absence of Congressional Action.

The Supreme Court's recent decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., et al, 102 S. Ct. 2858 (1982) held that the broad grant of jurisdiction to bankruptcy judges under the 1978 Act violates Article III of the Constitution. In applying its decision prospectively, the Court stayed its judgment until October 4, 1982 in order to afford the Congress an opportunity to reconstitute the bankruptcy courts or adopt some other valid means of adjudication, without impairing the interim administration of the bankruptcy laws.

During July and August, both the House and Senate held hearings on this important issue. Earlier this month, the Executive Committee of the Judicial Conference provided the Congress with its views and offered draft legislation for revision of the current law in order to satisfy the Supreme Court's decision, with a minimum of disruption to the bankruptcy court structure. While it is hoped that the Congress will take affirmative action to remedy the constitutional defects in the bankruptcy law before the stay terminates on October 4, it is possible it may not have time to do so.

Therefore, the following is the view of the Administrative Office of the United States Courts of the status of the bankruptcy law during the transition period ending March 31, 1984 if the Congress fails to act by October 4 and no extension of the stay is granted.

In Marathon, the Court found that certain powers assigned to bankruptcy judges by the 1978 Bankruptcy Act could be constitutionally exercised only by an Article III judge. The Court refused to sever the unconstitutional excess and thus struck the Act's assignment of powers to bankruptcy judges in its entirety, effective October 5, 1982.

Marathon does not cause a jurisdictional lapse. The Administrative Office concludes that Marathon did not invalidate 11 U.S.C. sections 1471 (a), (b). In addition, sections 404 and 405 of the 1978 Act also vest bankruptcy powers in the district courts as "courts of bankruptcy" until 1984.

The attached rule is an interim measure by which district courts may delegate many of their bankruptcy powers to bankruptcy judges. The authority for this is found in section 105 of the 1978 Act (11 U.S.C. sec. 105), which gives courts of bankruptcy the power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," and in Bankruptcy Rule 927, which gives bankruptcy courts the power to adopt "rules governing practice and procedure under the Act." This delegation of power is consistent with the long tradition of a bankruptcy court consisting of two judicial officers and the clear intent of the Congress to continue a two-officer court of bankruptcy through 1984.

Under the Rule, all bankruptcy matters are initially referred to a bankruptcy judge. [Section b(1) of the Rule.] In proceedings not involving a final judgment in a Marathon claim, the bankruptcy judge may enter orders and judgments that become effective immediately, subject to district court review if requested by a party. [Section (c)(2).] With respect to final judgments in Marathon claims, the bankruptcy judge prepares recommended findings and conclusions and a proposed judgment. [Section (c)(3).] A district judge then reviews the recommendation and enters a judgment. [Section (c)(5).] Where the bankruptcy judge certifies that circumstances require, an order or judgment entered by a bankruptcy judge will be confirmed by a district judge even if no objection is filed.

The district court will provide expedited review or confirmation of any order, judgment, or proposed judgment where the bankruptcy judge certifies prompt review is necessary.

William E. Foley

William E. Foley

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

WILLIAM JAMES WELLER
LEGISLATIVE AFFAIRS
OFFICER

September 28, 1982

Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
2226 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of September 24, 1982 requesting information concerning actions taken by the Judicial Conference on September 22 and 23 regarding: (1) needed additional judicial positions for the courts of appeals and district courts; and (2) a report, by the Conference's Committee on the Administration of the Bankruptcy System, which estimates the possible number of bankruptcy court judgeships which may be needed after April 1, 1984 (prepared in accordance with the provisions of section 406 of Public Law 95-598). I believe that the material provided in this letter and its enclosures, as well as material which I submitted to the Subcommittee on Courts during hearings held on Friday, September 24, 1982 constitutes the most complete response I am able to make to your September 24 request.

In response to your request concerning needed additional judicial positions for the courts of appeals and district courts, I am providing two enclosed tables which present, in the format used in sections 44 and 133 of title 28, United States Code, numbers of existing positions; those recommended by the Judicial Conference in September of 1980, those recommended by the Conference last week, and the total number of positions which would be authorized if all Conference recommendations are approved by the Congress. During my testimony before the Subcommittee on Courts last Friday, I provided for inclusion in the record, a copy of the materials contained in the Court Administration Committee's Report to the Conference explaining the reasons justifying all recommendations. Information contained in those materials should be fully responsive to your request for specific information concerning needed additional judgeships in the districts of Wyoming and Minnesota and for the Court of Appeals for the Fourth Judicial Circuit. All recommendations presented to the Conference by the Committee were approved without revision.

In response to your request concerning the Conference's action upon a report from its Committee on the Administration of the Bankruptcy System, incidental to responsibilities imposed upon the Conference by section 406 of Public Law 95-598, I am providing a seventeen-page composite of tables included in that committee's report to the Conference. That composite presents, by district: (1) existing bankruptcy judges; (2) the number recommended by the Director of the Administrative Office (pursuant to section 406 of Public Law 95-598); (3) the number recommended by judicial councils of the circuits; and (4) the number recommended to the Conference by its committee.

After discussing the recommendations filed by its Committee on the Administration of the Bankruptcy System, the Conference, on September 23, 1982, concluded that, if the Article I bankruptcy court system which is presently authorized by Public Law 95-598 is preserved until the end of the "transition period" provided by that public law (until March 31, 1984), at least 300 Article I bankruptcy court judicial positions should be created and available on April 1, 1984. The Conference did not, however, expressly approve a final arrangement for distribution of those positions by judicial district; it remanded the project to its committee for additional analysis and revision of recommendations placed before the Conference by the committee report. Cognizant of the existing statutory requirement that "The Conference shall recommend to the Congress and to the President, before January 3, 1983 . . . ." the number of bankruptcy court judicial positions it believes will be needed, the remand to the committee was expressly conditioned upon submission of an additional report by early November of this year.

In explanation of the Conference's action, I should advise you that development of recommendations for bankruptcy court judgeships, undertaken in accordance with a rather detailed statutory mandate, is not a time-proven exercise, as is development of district court and courts-of-appeals recommendations. Processes and procedures for determining district court and courts of appeals judgeship needs, as explained in our transmission to you of March 5, 1981 (See Hearings on Additional Judicial Positions, Before the Subcomm. on Courts of the Senate Comm. on the Judiciary, 97th Cong., 1st Sess. 9-18 (1981).) have been developed over a period of eighteen years and have been proven to be highly accurate with the passage of time. In attempting to measure the bankruptcy courts' needs, we are working with information drawn from courts still moving through "transition period" adjustments to the extensive changes made by the 1978 Reform Act. Administrative Office surveys included personal interviews with each bankruptcy judge. Those judges estimated a need for from 285 to 325 judgeships. Our assessment led to a conclusion that 299 positions were needed. The "Director's Advisory Committee" of seven bankruptcy judges (See Section 407 of Public Law 95-598) concluded that 303 positions would be needed. On September 23 the Conference remanded the project, because additional adjustments in the committee's recommendations were clearly necessary. It announced the minimal number of 300 positions because, given the requirements of the statutory mandate placed upon the Conference by the 1978 Reform Act and existing workload burdens as assessed by the bankruptcy judges themselves, there is literally no possibility that fewer than 300 positions will be required.

I hope this letter and its enclosures satisfactorily respond to your September 24 request.

Sincerely,

Bill Weller

William James Weller
Legislative Affairs Officer

Enclosures

UNITED STATES COURTS OF APPEALS CURRENTLY AUTHORIZED JUDICIAL POSITIONS, 1980 JUDICIAL CONFERENCE RECOMMENDATIONS, AND 1982 JUDICIAL CONFERENCE RECOMMENDATIONS, BY CIRCUIT

Circuits	Existing	1980	1982	Combined	Total
District of Columbia	11	1	0	1	12
First	4	1	1	2	6
Second	11	2	0	2	13
Third	10	2	0	2	12
Fourth	10	0	1	1	11
Fifth	14	0	0	0	14
Sixth	11	2	2	4	15
Seventh	9	2	0	2	11
Eighth	9	0	1	1	10
Ninth	23	3T	2*	5	28
Tenth	8	1	1	2	10
Eleventh	12	0	0	0	12
Federal**	12	0	0	0	12
	144	11 + 3T	8	22	166

* 1980 recommendations for temporary positions were also revised to permanent positions

** Effective October 1, 1982

UNITED STATES DISTRICT COURTS CURRENTLY AUTHORIZED JUDICIAL POSITIONS, 1980 JUDICIAL CONFERENCE RECOMMENDATIONS, AND 1982 JUDICIAL CONFERENCE RECOMMENDATIONS, BY STATE AND DISTRICT

Districts	Existing	1980	1982	Combined	Total
Alabama:					
Northern	7	0	0	0	7
Middle	3	0	0	0	3
Southern	2	0	1	1	3
Alaska	2	1	0	1	3
Arizona	8	0	0	0	8
Arkansas:					
Eastern	3	0	0	0	3
Western	1	1T	0	1T	1 + 1T
Eastern & Western	2	0	0	0	2
California:					
Northern	12	0	0	0	12
Eastern	6	0	0	0	6
Central	17	2	2	4	21
Southern	7	0	0	0	7
Colorado	6	0	0	0	6
Connecticut	5	1	0	1	6
Delaware	3	0	0	0	3
District of Columbia	15	0	0	0	15
Florida:					
Northern	3	0	0	0	3
Middle	9	0	0	0	9
Southern	12	3*	0	3	15
Georgia:					
Northern	11	0	0	0	11
Middle	2	1	0	1	3
Southern	3	0	0	0	3
Hawaii	2	1	0	1	3
Idaho	2	0	0	0	2
Illinois:					
Northern	16	2	1 + 1T	3 + 1T	19 + 1T
Central	3	0	0	0	3
Southern	2	1	0	1	3
Indiana:					
Northern	4	1T	0	1T	4 + 1T
Southern	5	0	0	0	5

* September 1980 Recommendation, as revised in March 1982

	Existing	1980	1982	Combined	Total
Iowa:					
Northern	1	0	0	0	1
Southern	2	0	0	0	2
Northern & Southern	1	0	0	0	1
Kansas	5	0	0	0	5
Kentucky:					
Eastern	4 + 1T	0	0	0	4 + 1T
Western	3	0	1	1	4
Eastern & Western	1	0	0	0	1
Louisiana:					
Eastern	13	0	0	0	13
Middle	2	0	0	0	2
Western	5	0	1	1	6
Maine	2	0	0	0	2
Maryland	9	0	1	1	10
Massachusetts	10	0	1 + 1T	1 + 1T	11 + 1T
Michigan:					
Eastern	13	1	1	2	15
Western	4	0	0	0	4
Minnesota	5 + 1T	0	1T/P	1T/P	6
Mississippi:					
Northern	2	1	0	1	3
Southern	3	1	1	2	5
Missouri:					
Eastern	4	1	0	1	5
Western	5	0	0	0	5
Eastern & Western	2	0	0	0	2
Montana	2	0	1	1	3
Nebraska	3	0	0	0	3
Nevada	3	0	0	0	3
New Hampshire	2	0	0	0	2
New Jersey	11	2	1	3	14
New Mexico	4	0	0	0	4
New York:					
Northern	3	0	1	1	4
Southern	27	1	1	2	29
Eastern	10	0	0	0	10
Western	3	1T	0	1T	3 + 1T
North Carolina:					
Eastern	3	1T	0	1T	3 + 1T
Western	3	0	0	0	3
Middle	3	0	0	0	3

	Existing	1980	1982	Combined	Total
North Dakota ------------------	2	0	0	0	2
Ohio:					
Northern -------------------	9 + 1T	1T/P	1T	1T + 1T/P	10 + 1T
Southern -------------------	6	0	0	0	6
Oklahoma:					
Northern -------------------	2	0	0	0	2
Eastern --------------------	1	0	0	0	1
Western --------------------	3	1	0	1	4
Northern, Eastern & Western	2	0	0	0	2
Oregon ----------------------	5	0	0	0	5
Pennsylvania:					
Eastern --------------------	19	0	0	0	19
Middle ---------------------	5	0	0	0	5
Western --------------------	10	0	0	0	10
Puerto Rico -----------------	7	0	0	0	7
Rhode Island ----------------	2	1	0	1	3
South Carolina --------------	8	0	0	0	8
South Dakota ----------------	3	0	0	0	3
Tennessee:					
Eastern --------------------	3	0	1	1	4
Middle ---------------------	3	0	0	0	3
Western --------------------	3	1	0	1	4
Texas:					
Northern -------------------	9	0	0	0	9
Southern -------------------	13	0	0	0	13
Eastern --------------------	4	1	1	2	6
Western --------------------	6	0	1	1	7
Utah ------------------------	3	0	0	0	3
Vermont ---------------------	2	0	0	0	2
Virginia:					
Eastern --------------------	8	1	0	1	9
Western --------------------	4	0	0	0	4
Washington:					
Eastern --------------------	2	0	0	0	2
Western --------------------	5	1 + 1T	0	1 + 1T	6 + 1T
West Virginia:					
Northern -------------------	1	0	0	0	1
Southern -------------------	3 + 1T	0	0	0	3 + 1T
Northern & Southern --------	1	0	0	0	1
Wisconsin:					
Eastern --------------------	4	0	0	0	4
Western --------------------	2	0	0	0	2
Wyoming ---------------------	1	0	1	1	2
	507 + 4T	25 5T 1T/P	18 3T 1T/P	43 8T 2T/P	552 10T
	511				562

Page 1 COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS			BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
Circuit and District	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Place of Holding Court
D.C.	1	Washington		1	Washington		SAME AS DIRECTOR			1	Washington	
FIRST CIRCUIT												
Maine	1	Bangor	Auburn Augusta	1	Portland	Auburn Augusta Bangor Presque Isle	2	Portland Bangor	Auburn Augusta Presque Isle (1)	1	Portland	Auburn Augusta
	1	Portland	Caribou Waterville							1	Bangor	Presque Isle
Massachusetts	3	Boston	Pittsfield Springfield	4	Boston	Pittsfield Springfield	SAME AS DIRECTOR			4	Boston	Pittsfield Springfield
	1	Worcester	Taunton	1	Worcester					1	Worcester	
New Hampshire	1PT	Manchester	Concord	1	Manchester	Concord Keene Exeter	SAME AS DIRECTOR			1	Manchester	Concord Keene Exeter
Puerto Rico	2	San Juan		2	San Juan	Charlotte Amalie* St. Thomas, VI Christiansted* St. Croix, VI	3	San Juan	Charlotte Amalie (2) Christiansted	2	San Juan	Charlotte Amalie,* St. Thomas, VI Christiansted,* St. Croix, VI
Rhode Island	1	Providence		1	Providence		SAME AS DIRECTOR			1	Providence	
SECOND CIRCUIT												
Connecticut	1	Bridgeport	New Haven	1	Hartford	Bridgeport New London	1 1 1	Hartford New Haven Bridgeport	New London (3)	1	Hartford	Bridgeport New London
	1	Hartford		2	New Haven					2	New Haven	
New York (E)	3	Brooklyn	Hauppauge	2	Brooklyn		SAME AS DIRECTOR			3	Brooklyn	Rego Park
	3	Westbury		1	Rego Park					2	Westbury	
				3	Westbury					1	Hauppauge	
				1	Hauppauge							

* Please see Fourth Circuit, Virgin Islands, page 3.

(1) See list of footnotes attached from (1) through (38) explaining all points of disagreement or variations from Director's Recommendations.

TABLE I
TABLE II
TABLE III

Page 2

COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS			BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
Circuit and District	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court
New York (N)*	1	Albany	Binghamton Malone	1	Albany	Binghamton Kingston	SAME AS DIRECTOR			1	Albany	Binghamton Kingston
	1	Utica	Plattsburg Syracuse	1	Utica	Plattsburg Watertown				1	Utica	Plattsburg Watertown
			Watertown	1	Syracuse					1	Syracuse	
New York (S)	5	New York	Kingston Newburgh	5	New York	Newburgh	SAME AS DIRECTOR			5	New York	Newburgh
	1	Poughkeepsie	Suffern	1	White Plains					1	White Plains	
	1	White Plains		1*	Poughkeepsie					1	Poughkeepsie*	
New York (W)	2	Buffalo	Batavia Dunkirk	2	Buffalo	Batavia Jamestown	SAME AS DIRECTOR			2	Buffalo	Batavia Jamestown
	1	Rochester	Jamestown Niagara Falls Olean Watkins Glen	2	Rochester	Lockport Lyons Niagara Falls Olean Watkins Glen				2	Rochester	Lockport Lyons Niagara Falls Olean Watkins Glen
Vermont	1PT	Rutland	Bennington Brattleboro Burlington Montpelier St. Johnsbury	1	Burlington	Bennington Brattleboro Montpelier Rutland	SAME AS DIRECTOR			1	Burlington	Bennington Brattleboro Montpelier Rutland

* The bankruptcy judge position at Poughkeepsie would be given concurrent jurisdiction in the Northern District of New York.

Page 3 COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS			BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
Circuit and District	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court
THIRD CIRCUIT												
Delaware	1PT	Wilmington	Georgetown Dover	1*	Wilmington		SAME AS DIRECTOR			1*	Wilmington	
New Jersey	1	Camden		2	Camden	Atlantic City		Camden	Atlantic City (4)	2	Camden	Atlantic City
	2	Newark		3	Newark		9	Newark		4	Newark	
	2	Trenton		3	Trenton			Trenton		3	Trenton	
Pennsylvania (E)*	2	Philadelphia	Easton	2	Philadelphia	Allentown Lancaster	SAME AS DIRECTOR (5)			2	Philadelphia	Allentown Lancaster
	1	Reading		1	Reading					1	Reading	
Pennsylvania (M)	1	Harrisburg	Lewisburg Scranton	1	Harrisburg	Scranton Williamsport	SAME AS DIRECTOR			1	Harrisburg	Scranton Williamsport
	1	Wilkes-Barre	Williamsport	1	Wilkes-Barre					1	Wilkes-Barre	
Pennsylvania (W)	1	Erie	Greensburg Johnstown	1	Erie	Greensburg Johnstown	1	Erie	Greensburg Johnstown (8)	1	Erie	Greensburg Johnstown
	2	Pittsburgh	Mercer Warren	3	Pittsburgh	Mercer Warren	4	Pittsburgh	Mercer Warren	4	Pittsburgh	Mercer Warren
Virgin Islands	1PT	Christiansted, St. Croix	Charlotte Amalie, St. Thomas	0**	San Juan, Puerto Rico	Charlotte Amalie, St. Thomas, and Christiansted, St. Croix	SAME AS DIRECTOR, i.e. to be handled by bankruptcy judge from Puerto Rico			0***		

---

* The bankruptcy judge for the District of Delaware would be given concurrent jurisdiction in the Eastern District of Pennsylvania.

** Recommendation that bankruptcy judge from the District of Puerto Rico should provide service to this District or the alternative recommendation that Congress may wish to enact special legislation which would enable bankruptcy cases to be handled by existing district court in the Virgin Islands.;

*** Bankruptcy Committee recommends the caseload be handled by the bankruptcy judges from Puerto Rico.

Page 4 COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS				BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
Circuit and District	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court		Number of Judges	Regular Place of Office	Additional Places of Holding Court
FOURTH CIRCUIT													
Maryland	1 1	Baltimore Rockville	Easton Hagerstown Salisbury	3 1	Baltimore Rockville	Annapolis Hagerstown Hyattsville Salisbury	SAME AS DIRECTOR				3 1	Baltimore Rockville	Annapolis Hagerstown Hyattsville Salisbury
North Carolina (E)	2	Wilson	Fayetteville New Bern Raleigh	1 2	Fayetteville Raleigh	New Bern Wilmington Wilson	1 1 1	Wilson Raleigh New Bern	Fayetteville Wilmington Elizabeth City	(7)	1 2	Fayetteville Raleigh	New Bern, Wilson, Wilmington, Elizabeth City
North Carolina (M)	2	Greensboro	Durham Winston-Salem	2	Greensboro	Durham Winston-Salem	SAME AS DIRECTOR				2	Greensboro	Durham Winston-Salem
North Carolina (W)	1	Charlotte	Asheville	2	Charlotte	Asheville Bryson City Shelby Wilkesboro	1 1	Charlotte Asheville	Shelby Wilkesboro	(8)	2	Charlotte	Asheville Bryson City Shelby Wilkesboro
South Carolina	1	Columbia	Charleston Greenville	2	Columbia	Charleston Spartanburg	SAME AS DIRECTOR				2	Columbia	Charleston Spartanburg
Virginia (E)	1 1 1	Alexandria Norfolk Richmond	Newport News	1 2 1	Alexandria Norfolk Richmond	Newport News Petersburg Virginia Beach	SAME AS DIRECTOR				1 2 1	Alexandria Norfolk Richmond	Newport News Petersburg Virginia Beach
Virginia (W)	1PT 1 1	Harrisonburg Lynchburg Roanoke	Abingdon Bristol Charlottesville Covington Danville Staunton Winchester	1 1 2	Harrisonburg Lynchburg Roanoke	Abingdon Big Stone Gap Charlottesville Danville Lexington Staunton Woodstock	1 1 1 1	**Harrisonburg Lynchburg Roanoke Abingdon or Big Stone Gap	Staunton Charlottesville Danville Lexington Abingdon or Big Stone Gap	(9)	1*** 1 2	Harrisonburg Lynchburg Roanoke	Abingdon Big Stone Gap Charlottesville Danville Lexington Staunton Woodstock

* The bankruptcy judge at Harrisonburg would be given concurrent jurisdiction in the Southern and Northern Districts of West Virginia. Director's Recommendation.

** Bankruptcy judge position at Harrisonburg will not have concurrent jurisdiction in West Virginia districts. Judicial Council's Recommendation.

*** Bankruptcy Judge at Harrisonburg will have concurrent jurisdiction in the Northern District of West Virginia. BC Recommendation.

Page 5 COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS			BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
Circuit and District	Number of Judges	Principal Place of Office	Additional Places of Holding Court	Number of Judges	Principal Place of Office	Additional Places of Holding Court	Number of Judges	Principal Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court
West Virginia (N)*	1	Wheeling ***	Clarksburg Elkins Fairmont Martinsburg Parkersburg	1	Wheeling	Clarksburg Parkersburg	1	Wheeling	Clarksburg (10) Parkersburg Elkins Martinsburg	1	Wheeling	Clarksburg Parkersburg
							1**					
West Virginia (S)*	1	Charleston ***	Beckley Bluefield Huntington	1	Charleston	Beckley Bluefield Huntington	1	Charleston	Beckley (10) Bluefield Huntington	1	Charleston	Beckley Bluefield Huntington
FIFTH CIRCUIT												
Louisiana (E)	2	New Orleans		2	New Orleans		SAME AS DIRECTOR			2[1]	New Orleans	
Louisiana (M)	1PT	Baton Rouge		1	Baton Rouge		SAME AS DIRECTOR			0		
Louisiana (W)	1	Opelousas	Alexandria Lafayette	1	Lafayette	Alexandria Lake Charles	Same as Director except implementation of some changes deferred			1[1]	Lafayette	Alexandria Lake Charles
	1	Shreveport	Lake Charles Monroe	1	Shreveport	Monroe				1[1]	Shreveport	Monroe
Mississippi (N)	1	Greenville	Clarksdale Houston Oxford	1	Aberdeen	Clarksdale Greenville Oxford	Same as Director except implementation to be deferred			1	Aberdeen	Clarksdale Greenville Oxford
Mississippi (S)	1	Biloxi	Hattiesburg Meridian	1	Biloxi	Hattiesburg Meridian	SAME AS DIRECTOR			1	Biloxi	Hattiesburg Meridian
	1	Jackson	Natchez Vicksburg	1	Jackson	Natchez Vicksburg				1	Jackson	Natchez Vicksburg

---

* Please see Fourth Circuit, Western District of Virginia, Harrisonburg, on page 4.

** Judicial Council recommends one swing judge to serve both districts of West Virginia in lieu of Director's recommendation to have them served by the bankruptcy judge from Harrisonburg, Virginia.

*** The bankruptcy judges for Northern and Southern Districts of West Virginia will have state-wide jurisdiction. Bankruptcy Committee recommendation.

[1] The Middle District of Louisiana will be served by the judges in the Eastern and Western Districts of Louisiana, who will have concurrent jurisdiction in the Middle District of Louisiana. Bankruptcy Committee recommendation.

Page 6

COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Circuit and District	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS				BANKRUPTCY COMMITTEE'S RECOMMENDATION		
	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court		Number of Judges	Regular Place of Office	Additional Places of Holding Court
Texas (E)	1PT	Tyler	Beaumont Sherman	1*	Tyler	Beaumont Marshall Paris Sherman Texarkana	1	Tyler Concurrent jurisdiction in (N) Texas only on time available basis.	Beaumont Marshall Paris Texarkana Lufkin	(13)	1	Tyler***	Beaumont Marshall Paris Sherman Texarkana
Texas (N)*	2	Dallas	Abilene Amarillo	3	Dallas	Abilene Amarillo	SAME AS DIRECTOR**				4	Dallas	Fort Worth Abilene
	1	Fort Worth	San Angelo Wichita Falls	1	Fort Worth	San Angelo Wichita Falls					1	Lubbock	Amarillo San Angelo Wichita Falls
	1PT	Lubbock		1	Lubbock								
Texas (S)	3	Houston	Brownsville Corpus Christi Galveston Laredo Victoria	4	Houston	Harlingen	4	Houston	Brownsville	(14)	4	Houston	Harlingen[1] Corpus Christi
				1	Corpus Christi		1	Corpus Christi (See note for limitations)					
Texas (W)	2	San Antonio	Austin Del Rio El Paso Midland Odessa Pecos Waco	3	San Antonio	Austin Del Rio El Paso Midland Waco	SAME AS DIRECTOR				3	San Antonio	Austin Del Rio El Paso Midland Waco

---

* The bankruptcy judge at Tyler, Texas would be given concurrent jurisdiction with the bankruptcy judges for the Northern District of Texas. Director's Recommendation.

** Judicial Council recommends immediate increase of part time position at Lubbock to full time service.

*** The bankruptcy judge at Tyler, Texas would be given concurrent jurisdiction in the Northern District of Texas and would spend 50% of his time in the Northern District. Bankruptcy Committee's recommendation.

1. As an alternative to Brownsville, where space is unavailable.

Page 7 COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS			BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
Circuit and District	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court
SIXTH CIRCUIT												
Kentucky (E)	1	Lexington	Corbin Catlettsburg Covington Frankfort Jackson Pikeville	1	Covington	Ashland Corbin Frankfort Pikeville	SAME AS DIRECTOR			1	Covington	Ashland Corbin Frankfort Pikeville
				1	Lexington					1	Lexington	
Kentucky (W)	2	Louisville	Bowling Green Owensboro Paducah	3	Louisville	Bowling Green Owensboro Paducah	SAME AS DIRECTOR			3	Louisville	Bowling Green Owensboro Paducah
Michigan (E)	IPT	Bay City	Pontiac	1	Bay City	Pontiac	SAME AS DIRECTOR			5	Detroit	Pontiac Bay City
	1	Flint		1	Flint					1	Flint	
	3	Detroit		4	Detroit							
Michigan (W)	2	Grand Rapids	Kalamazoo Lansing Traverse City	4	Grand Rapids	Kalamazoo Lansing Marquette Traverse City	SAME AS DIRECTOR			4	Grand Rapids	Kalamazoo Lansing Marquette Traverse City
	IPT	Marquette										
Ohio (N)	1	Akron	Fremont Jefferson Lima Mansfield Marion	2	Akron	Lima Mansfield	SAME AS DIRECTOR			2	Akron	Lima Mansfield
	1	Canton		1	Canton					1	Canton	
	3	Cleveland		3	Cleveland					3	Cleveland	
	2	Toledo		2	Toledo					2	Toledo	
	1	Youngstown		1	Youngstown					1	Youngstown	

Page 8

COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS				BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
Circuit and District	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court		Number of Judges	Regular Place of Office	Additional Place of Holding Court
Ohio (S)	2	Cincinnati	Portsmouth Springfield Steubenville Zanesville	2	Cincinnati	Portsmouth Springfield Steubenville Zanesville	SAME AS DIRECTOR				2	Cincinnati	Portsmouth Springfield Steubenville Zanesville
	3	Columbus		4	Columbus						4	Columbus	
	2	Dayton		2	Dayton						2	Dayton	
Tennessee (E)	1	Chattanooga	Athens Greeneville Johnson City Winchester	2	Chattanooga	Athens Greeneville Johnson City Winchester	SAME AS DIRECTOR				2	Chattanooga	Athens Greeneville Johnson City Winchester
	1	Knoxville		1	Knoxville						1	Knoxville	
Tennessee (M)	2	Nashville	Columbia Cookeville	3	Nashville	Columbia Cookeville	SAME AS DIRECTOR				2	Nashville	Columbia Cookeville
Tennessee (W)	2	Memphis	Jackson	3	Memphis	Jackson	SAME AS DIRECTOR				3	Memphis*	Jackson
SEVENTH CIRCUIT													
Illinois (C)**	1PT	Danville	Bloomington Decatur Galesburg Kankakee Rock Island Mattoon Quincy	1	Danville	Bloomington Decatur Galesburg Kankakee Paris Quincy Rock Island	SAME AS DIRECTOR				1	Danville	Bloomington Decatur Galesburg Kankakee Paris Quincy Rock Island
	1	Peoria		1	Peoria						1	Peoria	
	1	Springfield		1	Springfield						1	Springfield	
Illinois (N)	7	Chicago	Dixon Freeport Geneva Joliet Ottawa Sterling Waukegan Wheaton	11	Chicago	Geneva Joliet Ottawa Waukegan Wheaton	14	Chicago	Geneva Joliet Ottawa Waukegan Wheaton	(15)	14	Chicago	Geneva Joliet Ottawa Waukegan Wheaton
	1	Rockford		1	Rockford		1	Rockford			1	Rockford	

* Bankruptcy Judges for the Western District of Tennessee will have concurrent jurisdiction with the judges for the Middle District of Tennessee. Bankruptcy Committee recommendation.

** The Central District of Illinois will have concurrent jurisdiction in the Southern District of Illinois. Bankruptcy Committee's recommendation.

Page 2 COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS				BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
Circuit and District	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court		Number of Judges	Regular Place of Office	Additional Places of Holding Court
Illinois (S)*	1	E.St. Louis	Alton Benton Cairo	1	E.St. Louis	Alton Benton Cairo	2	E.St. Louis	Alton Benton Cairo	(18)	1	E.St. Louis	Alton Benton Cairo
							Second judge would have concurrent jurisdiction in (E) Missouri						
Indiana (N)	1	Gary	Fort Wayne Hammond	1	Fort Wayne	Lafayette Marion	1	Fort Wayne	Lafayette Peru	(17)	1	Fort Wayne	Lafayette Marion
	1	South Bend	Peru	1	Merrillville	Peru	1	Gary	Marion		1	Gary	Peru
				1	South Bend		1	Unspecified**			1	South Bend	
							1	South Bend					
Indiana (S)	1	Evansville	Kokomo Muncie	1	Evansville	Kokomo Richmond	1	Evansville	Kokomo Richmond	(17)	1	Evansville	Kokomo Richmond
	3	Indianapolis	New Albany Richmond Terre Haute	3	Indianapolis	Terre Haute	3	Indianapolis	Terre Haute		3	Indianapolis	Terre Haute
				1	New Albany		**	Unspecified			1	New Albany	
							1	New Albany					
Wisconsin (E)	3	Milwaukee	Green Bay Kenosha Manitowoc Oshkosh Racine	3	Milwaukee	Green Bay Manitowoc Oshkosh Racine	SAME AS DIRECTOR				3	Milwaukee	Green Bay Manitowoc Oshkosh Racine
Wisconsin (W)	1PT	Eau Claire	LaCrosse Superior Wausau	1	Eau Claire	LaCrosse Superior Wausau	SAME AS DIRECTOR				1	Eau Claire	LaCrosse Superior Wausau
	1	Madison		1	Madison						1	Madison	

---

* One of the judges in the Eastern District of Missouri would be given concurrent jurisdiction to serve in this district. Director's Recommendation.

** Judicial Council recommends an additional judge to serve both the Northern and Southern Districts of Indiana. Location of principal place of office not specified.

Page 10 COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS				BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
Circuit and District	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court		Number of Judges	Regular Place of Office	Additional Places of Holding Court
EIGHTH CIRCUIT													
Arkansas (E/W)	2	Little Rock	Batesville El Dorado Fayetteville Fort Smith Harrison Helena Hot Springs Jonesboro Texarkana	3	Little Rock	El Dorado Fayetteville Fort Smith Harrison Helena Hot Springs Jonesboro Texarkana	3	Little Rock	El Dorado Fayetteville Harrison Helena Hot Springs Jonesboro Texarkana Pine Bluff Batesville	(18)	2	Little Rock	El Dorado Fayetteville Fort Smith Harrison Helena Hot Springs Jonesboro Texarkana Pine Bluff
							1	Fort Smith (In (W))					
Iowa (N)	1	Cedar Rapids	Dubuque Fort Dodge Sioux City Waterloo	2	Cedar Rapids	Dubuque Fort Dodge Sioux City Waterloo	1	Cedar Rapids	Dubuque Fort Dodge Waterloo Mason City	(18)	2	Cedar Rapids	Dubuqne Fort Dodge Sioux City Waterloo
							1	Sioux City					
Iowa (S)	1	Des Moines	Council Bluffs Davenport	2	Des Moines	Council Bluffs Davenport	SAME AS DIRECTOR				2	Des Moines	Council Bluffs Davenport
Minnesota***	1PT	Duluth	Fergus Falls Mankato Rochester St. Cloud	1	Duluth	Fergus Falls Mankato Rochester St. Cloud	1	Duluth	Marshall Fergus Falls Mankato Rochester St. Cloud	(20)	2	Minneapolis	Duluth**** Fergus Falls Mankato Rochester St. Cloud
	2	Minneapolis		2	Minneapolis		2	Minneapolis			2	St. Paul	
	2	St. Paul		2	St. Paul		2	St. Paul					
							1	**Unspecified					
Missouri (E)	3	St. Louis	Cape Girardeau Hannibal	3*	St. Louis	Cape Girardeau Hannibal	Same as Director except no concurrent jurisdiction in (S) Illinois.				3	St. Louis	Cape Girardeau Hannibal

* One of the judges in the Eastern District of Missouri would be given concurrent jurisdiction to also serve in the Southern District of Illinois. Director's Recommendation.

** One Judge from the District of North Dakota would be given concurrent jurisdiction to serve the Sixth Division of the District of Minnesota, excluding Stearns County. Director's Recommendation.

*** Judicial Council recommends that there be no concurrent jurisdiction by the North Dakota bankruptcy judge in Minnesota.

**** Duluth is discontinued as a regular place of office. The bankruptcy judge in North Dakota will have concurrent jurisdiction in Fergus Falls (Sixth) Division, excluding Stearns County. Bankruptcy Committee recommendation.

Page 11 COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Circuit and District	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS				BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court		Number of Judges	Regular Place of Office	Additional Places of Holding Court
Missouri (W)	3	Kansas City	Cape Girardeau Hannibal Jefferson City Joplin Springfield St. Joseph St. Louis	3 1	Kansas City Springfield	Jefferson City Joplin St. Joseph	SAME AS DIRECTOR				3 1	Kansas City Springfield	Jefferson City Joplin St. Joseph
Nebraska	1	Omaha	Grand Island Lincoln North Platte	2	Omaha	Grand Island Lincoln North Platte Scotts Bluff	2 1	Omaha Lincoln	Lincoln Grand Island North Platte Scotts Bluff	(22)	2	Omaha	Grand Island Lincoln North Platte Scotts Bluff
North Dakota	1	Fargo	Bismarck Fergus Falls, Minnesota Minot	1[*]	Fargo	Bismarck Fergus Falls, Minnesota Grand Forks Minot	Same as Director except that concurrent jurisdiction in Minnesota be discontinued			(23)	1[**]	Fargo	Bismarck Fergus Falls, Minnesota Grand Forks Minot
South Dakota	1	Sioux Falls	Aberdeen Deadwood Pierre Rapid City	1	Sioux Falls	Aberdeen Pierre Rapid City	SAME AS DIRECTOR				1	Sioux Falls	Aberdeen Pierre Rapid City
NINTH CIRCUIT													
Alaska	1	Anchorage	Fairbanks Juneau Ketchikan Nome	1	Anchorage	Fairbanks Juneau Ketchikan Nome	2	Anchorage	Kodiak Cordova Fairbanks Juneau Ketchikan Nome Valdez Sitka	(24)	2[***]	Anchorage	Kodiak Cordova Fairbanks Juneau Ketchikan Nome Valdez Sitka

---

[*] Please see Eighth Circuit, District of Minnesota, on page 10. Director's Recommendation.

[**] The North Dakota bankruptcy judge has concurrent jurisdiction with the Minnesota judges in Fergus Falls (Sixth) Division with the exception of Stearns County. Bankruptcy Committee recommendation.

[***] The judges in Alaska will have concurrent jurisdiction in the District of Hawaii. Bankruptcy Committee recommendation.

Page 12

COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS				BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
Circuit and District	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court		Number of Judges	Regular Place of Office	Additional Places of Holding Court
Arizona	3	Phoenix	Prescott Yuma	3	Phoenix	Flagstaff Globe Prescott Yuma	3	Phoenix	Flagstaff Globe Prescott Yuma	(25)	3	Phoenix	Flagstaff Globe Prescott Yuma
	1	Tucson		1	Tucson		1	Tucson			1	Tucson	
							1	Unspecified					
California (C)	8	Los Angeles	Riverside San Luis Obispo Santa Barbara Ventura	10	Los Angeles	Santa Barbara	10	Los Angeles	Santa Barbara	(28)	13	Los Angeles	Santa Barbara
	2	San Bernardino		2	San Bernardino		2	San Bernardino			2	San Bernardino	
	2	Santa Ana		3	Santa Ana		3	Santa Ana			3	Santa Ana	
							3	Unspecified					
California (E)	1	Fresno	Bakersfield Ceres Chico Marysville Merced Redding Stockton Vallejo	2	Fresno	Bakersfield Redding Stockton Vallejo	SAME AS DIRECTOR				2	Fresno	Bakersfield Redding Stockton Vallejo
	1	Modesto		1	Modesto						1	Modesto	
	2	Sacramento		3	Sacramento						3	Sacramento	
California (N)	1	Eureka	Salinas Santa Rosa	3	Oakland	Eureka Monterey Salinas Santa Cruz	3	Oakland	Eureka Monterey Salinas Santa Cruz	(27)	3	Oakland	Eureka Monterey Salinas Santa Cruz
	2	Oakland		3	San Francisco		3	San Francisco			4	San Francisco	
	2	San Francisco		3	San Jose		3	San Jose			3	San Jose	
	2	San Jose		1	Santa Rosa		1	Santa Rosa			1	Santa Rosa	
							1	Unspecified					
California (S)	3	San Diego	El Centro	4	San Diego	El Centro	5	San Diego	El Centro		4	San Diego	El Centro

Page 11 COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS				BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
Circuit and District	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court		Number of Judges	Regular Place of Office	Additional Places of Holding Court
Guam*	0		Agana	0	Honolulu, HI	Agaña	0-District court should handle bankruptcy cases.			(29)	0***		
Hawaii	1	Honolulu	Hilo Lihue Wailuku Agana, Guam Saipan, Northern Mariana Islands	2*	Honolulu	Hilo Lihue Wailuku Agana, Guam* Saipan, Northern Mariana Islands*	1 bankruptcy judge if bankruptcy cases on Guam and Northern Mariana Islands are handled by the District Court at Guam.			(30)	1	Honolulu	Hilo Lihue Wailuku Agana, Guam Saipan, Northern Mariana Islands
Idaho	1**	Boise	Coeur d'Alene Pocatello	2**	Boise	Coeur d'Alene Moscow Pocatello Twin Falls	SAME AS DIRECTOR				2**	Boise	Coeur d'Alene Moscow Pocatello Twin Falls
Montana	1PT 1PT	Butte Great Falls	Billings Missoula	1	Great Falls	Billings Butte Helena Missoula	Same as Director except that location of principal place of office should be left to appointee.			(31)	1	Great Falls	Billings Butte Helena Missoula
Nevada	1 1	Lob Vegas Reno	Carson City Elko Ely	2 1	Las Vegas Reno	Carson City Elko Ely	SAME AS DIRECTOR				1 1	Las Vegas Reno	Carson City Elko Ely
N. Mariana Islands*	0		Saipan	0	Honolulu, HI	Saipan	0-District court should handle bankruptcy cases.				0***		

* One bankruptcy judge at Honolulu, Hawaii would serve Agana, Guam and the Northern Mariana Islands. Director's Recommendations.

** Under both the present arrangements and the Director's recommendations, the judge(s) in the District of Idaho serve Malheur County in the southeastern District of Oregon. Also Bankruptcy Committee recommendation.

*** The territorial judge for the District of Guam will handle cases arising in Guam and the Northern Mariana Islands. Bankruptcy Committee recommendation.

COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS			BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
Circuit and District	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court
Oregon*	1PT 1	Eugene	Astoria Bend Coos Bay Klamath Falls LaGrande Lincoln City Medford Pendleton Roseburg Salem The Dalles Tillamook	2	Eugene	Bend Coos Bay Klamath Falls LaGrande Lincoln City Medford Pendleton Roseburg Salem Seaside The Dalles	SAME AS DIRECTOR			2	Eugene	Bend Coos Bay Klamath Falls LaGrande Lincoln City Medford Pendleton Roseburg Salem Seaside The Dalles
	3	Portland		3	Portland					3	Portland	
Washington (E)	1	Spokane	Ephrata Richland Walla Walla Yakima	2	Spokane	Moses Lake Richland Wenatchee Yakima	SAME AS DIRECTOR			2	Spokane	Moses Lake Richland Wenatchee Yakima
Washington (W)	3	Seattle	Bellingham Bremerton Everett Vancouver	3	Seattle	Bremerton Everett Longview Vancouver	SAME AS DIRECTOR			3	Seattle	Bremerton Everett Longview Vancouver
	1	Tacoma		2	Tacoma					2	Tacoma	
TENTH CIRCUIT												
Colorado	4	Denver	Colorado Springs Grand Junction Pueblo	1	Colorado Springs	Grand Junction Greeley Pueblo	SAME AS DIRECTOR			4	Denver	Grand Junction, Greeley, Pueblo
				4	Denver					1	Colorado Springs	

---

* Please see Ninth Circuit, District of Idaho, on page 13.

Page 15 COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Circuit and District	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS			BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court
Kansas	1	Kansas City	Fort Scott Salina	1	Kansas City	Fort Scott Garden City	SAME AS DIRECTOR			1	Kansas City	Fort Scott Garden City
	1	Topeka		1	Topeka					1	Topeka	
	1	Wichita		2	Wichita					2	Wichita	
New Mexico	1PT 1	Albuquerque	Clovis Las Cruces Las Vegas Roswell Santa Fe Silver City	2	Albuquerque	Las Cruces Roswell Santa Fe	SAME AS DIRECTOR			2	Albuquerque	Las Cruces Roswell Santa Fe
Oklahoma (E)	1PT	Okmulgee	Ada Ardmore McAlester Muskogee	1*	Muskogee	Ardmore McAlester Okmulgee	SAME AS DIRECTOR			1*	Muskogee	Ardmore McAlester Okmulgee
Oklahoma (N)*	1	Tulsa		1	Tulsa		Same as Director except concurrent jurisdiction is recommended in (E) Oklahoma.		(33)	1*	Tulsa	
Oklahoma (W)	2	Oklahoma City	Woodward	2	Oklahoma City	Enid Lawton Ponca City	SAME AS DIRECTOR			2	Oklahoma City	Enid Lawton Ponca City
Utah	2	Salt Lake City	Ogden	3	Salt Lake City	Ogden Provo	SAME AS DIRECTOR			3	Salt Lake City	Ogden Provo
Wyoming	1	Cheyenne	Casper Green River Sheridan Worland	1	Cheyenne	Casper Green River Sheridan Worland	SAME AS DIRECTOR			1	Cheyenne	Casper Green River Sheridan Worland

---

* The bankruptcy judge for the Eastern District of Oklahoma would be given concurrent jurisdiction with the bankruptcy judge for the Northern District of Oklahoma.

COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS			BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
Circuit and District	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court
ELEVENTH CIRCUIT												
Alabama (M)	2	Montgomery	Dothan Opelika	2	Montgomery	Dothan Opelika	SAME AS DIRECTOR			2**	Montgomery	Dothan Opelika
Alabama (N)	1	Anniston	Florence Gadsden Huntsville Jasper	1	Anniston	Decatur Florence Gadsden Jasper Talladega	1	Anniston	Gadsden Huntsville Florence Jasper Talladega (34)	1	Anniston	Huntsville Florence Gadsden Jasper Talladega
	2	Birmingham		3	Birmingham		3	Birmingham		2	Birmingham	
	1	Decatur		1	Huntsville		1	Decatur		1	Decatur	
	1	Tuscaloosa		1	Tuscaloosa		1	Tuscaloosa		1	Tuscaloosa	
Alabama (S)	2	Mobile	Selma	1	Mobile	Selma	2	Mobile	Selma (35)	1	Mobile	Selma
Florida (M)***	1	Jacksonville	Ocala Orlando	1	Jacksonville	Ocala	1	Jacksonville	Ocala Ft. Myers Gainesville (36)	1	Jacksonville	Ocala Fort Myers
	1	Tampa		1	Orlando		1	Orlando		1	Orlando	
				2	Tampa		2	Tampa		2	Tampa	
Florida (N)*	1	Tallahassee	Gainesville Panama City Pensacola	1	Tallahassee	Gainesville Panama City Pensacola	SAME AS DIRECTOR			1	Tallahassee	Gainesville Panama City Pensacola
Florida (S)	3	Miami	Fort Lauderdale Key West West Palm Beach	3	Miami	Fort Lauderdale West Palm Beach	SAME AS DIRECTOR			3	Miami	Fort Lauderdale West Palm Beach

* Concurrent jurisdiction would be given to the bankruptcy judges for the Middle District of Florida in Alachua, Dixie, Levy, Lafayette, and Gilchrist counties in the extreme eastern part of the Northern District of Florida.

** Concurrent jurisdiction would be given to the bankruptcy judges for the Middle District of Alabama with the bankruptcy judges in the Northern District of Alabama. Bankruptcy Committee recommendation.

*** Current jurisdiction in Northern District of Florida in Alachua, Levy, Gilchrist, Dixie, and Lafayette Counties. Bankruptcy Committee recommendation.

Page 17 COMPARISON OF PRESENT NUMBER AND ARRANGEMENTS FOR BANKRUPTCY JUDGES WITH RECOMMENDATIONS OF THE DIRECTOR MADE PURSUANT TO SECTION 406 OF PUBLIC LAW 95-598, RECOMMENDATIONS OF THE JUDICIAL COUNCILS AND THE BANKRUPTCY COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

	PRESENT ARRANGEMENTS			DIRECTOR'S RECOMMENDATIONS			JUDICIAL COUNCIL'S RECOMMENDATIONS				BANKRUPTCY COMMITTEE'S RECOMMENDATIONS		
Circuit and District	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court	Number of Judges	Regular Place of Office	Additional Places of Holding Court		Number of Judges	Regular Place of Office	Additional Places of Holding Court
Georgia (M)*	1 1	Columbus Macon	Albany Americus Athens Thomasville	1 1	Columbus Macon	Albany Americus Athens Thomasville Valdosta	3	Columbus Macon	Albany Americus Athens Thomasville Valdosta	(37)	1 1	Columbus Macon	Albany Americus Athens Thomasville Valdosta
Georgia (N)	6	Atlanta	Carrollton Gainesville Newnan Rome	7	Atlanta	Gainesville Newnan Rome	8	Atlanta	Rome Newnan Gainesville	(38)	6	Atlanta	Gainesville Newnan Rome
Georgia (S)*	1	Savannah	Augusta Brunswick Waycross	1 1	Augusta Savannah	Brunswick Dublin Swainsboro Waycross	SAME AS DIRECTOR				1 1	Augusta Savannah	Brunswick Dublin Swainsboro Waycross

* The bankruptcy judges in the Middle District of Georgia would be given concurrent jurisdiction in Laurens County in the Southern District of Georgia.

AGENDA G-2
Court Administration
September 1982

REPORT OF THE JUDICIAL CONFERENCE COMMITTEE ON COURT ADMINISTRATION

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN, AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Additional Judgeships

The Subcommittee on Judicial Statistics began the 1982 Biennial Survey of Judgeship Needs in August 1981 by requesting that each chief judge complete a questionnaire on his court's need, if any, for additional judgeships. After reviewing the responses from the chief judges and a six-year statistical profile prepared by the Statistical Analysis and Reports Division, the Subcommittee made preliminary recommendations for each court. Those recommendations were sent to chief judges of all district courts and courts of appeals on January 29, 1982, with the request that each Circuit Judicial Council review them and file recommendations on the need for additional judgeships for each court within the circuit. The responses from the Judicial Councils and the most recently available statistics from the Administrative Office formed the basis for the Subcommittee's final recommendations.

Since the Congress has not yet acted on judgeship recommendations approved by the Judicial Conference in September 1980, the Subcommittee's current survey and recommendations include those judgeships. The number of judgeships recommended in 1980 and the number of additional judgeships recommended as a result of the 1982

Biennial Survey are shown separately in the tables which summarize the Subcommittee's actions.

1. Courts of Appeals

The Subcommittee reviewed responses from the Judicial Councils and statistics for calendar year 1981 and based its recommendations primarily on the level of new appeals filed. The Subcommittee did not adopt a specific statistical standard for recommending new judgeships but decided generally that the level of new cases should not exceed 450-500 per panel. The number of additional judgeships recommended for each court is shown in Table 1. The basis for each recommendation is contained in the Subcommittee worksheets which are attached as Appendix A.

Table 1
U. S. Courts of Appeals
Additional Judgeships Recommended by
Subcommittee on Judicial Statistics
May 1982

Circuit	Additional Judgeships Requested by Circuit Judicial Council	1980 Judicial Conference Recommendations	Additional Subcommittee Recommendations May 1982	Total
TOTAL	22	11+3T	8	22
District of Columbia	1	1	0	1
First	2	1	1	2
Second.......	2	2	0	2
Third	2	2	0	2
Fourth	1	0	1	1
Fifth	0	0	0	0
Sixth	4	2	2	4
Seventh	2	2	0	2
Eighth	1	0	1	1
Ninth........	5	3T	2[*]	5
Tenth	2	1	1	2
Eleventh	0	0	0	0

[*] The Subcommittee also recommended that the three temporary judgeships recommended by the Judicial Conference in 1980 be changed to three permanent judgeships.

T=Temporary Judgeships

Recommendation:

Your Committee reviewed and concurred in the recommendations and therefore recommends that the Conference authorize transmittal to Congress of a request for the additional judgeships as shown in the third column of Table 1.

2. District Courts

The Subcommittee reviewed all information submitted by district court chief judges and Judicial Councils, and calendar year 1981 statistics prepared by the Administrative Office. In making its decisions on the need for additional judgeships, the Subcommittee considered the level of new case filings, the case mix, the level of weighted caseload, the pending caseload, and the length of trials. The Subcommittee generally concluded that weighted filings in excess of 400 per authorized judgeship indicated a probable need for additional judgeships. In the absence of that level of weighted filings, the Subcommittee considered the number and frequency of long trials and unique geographical problems which might justify a departure from that standard. The level of the pending caseload was used only in considering a recommendation for a temporary judgeship.

A summary of the Subcommittee's recommendations for each of the district courts follows in Table 2. The basis for each recommendation is contained in the worksheets attached as Appendix B.

Table 8
U. S. District Courts
Additional Judgeships Recommended by
Subcommittee on Judicial Statistics
May 1983

Circuit and District	Judgeships Requested By: District	Judgeships Requested By: Circuit Judicial Council	Additional Judgeships Approved: By Judicial Conference 1980	Additional Judgeships Approved: By Subcommittee May 1983	Additional Judgeships Approved: Total
Total	55,8T,2T/P	46,8T,3T/P	25,5T,T/P *	18+3T	43,8T,2T/P
DC	0	0	0	0	0
1st Cir.	4	2+1T	1	1+1T	2+1T
ME	0	0	0	0	0
MA	2	1+1T	0	1+1T	1+1T
NH	1	0	0	0	0
RI	1	1	1	0	1
PR	NR	0	0	0	0
2nd Cir.	4+1T	4+1T	2+1T	2	4+1T
CT	1	1	1	0	1
NY, N	1	1	0	1	1
NY, E	2	2	1	1	2
NY, S	0	0	0	0	0
NY, W	1T	1T	1T	0	1T
VT	0	0	0	0	0
3rd Cir.	3	3	2	1	3
DE	0	0	0	0	0
NJ	3	3	2	1	3
PA, E	0	0	0	0	0
PA, M	0	0	0	0	0
PA, W	0	0	0	0	0
VI	NR	0	0	0	0
4th Cir.	4+1T	3	1+1T	1	2+1T
MD	1	1	0	1	1
NC, E	1T	1	1T	0	1T
NC, M	0	0	0	0	0
NC, W	0	0	0	0	0
SC	1	0	0	0	0
VA, E	1	1	1	0	1
VA, W	0	0	0	0	0
WV, N	1	0	0	0	0
WV, S	0	0	0	0	0
5th Cir.	8	7	3	4	7
LA, E	0	0	0	0	0
LA, M	0	0	0	0	0
LA, W	1	1	0	1	1
MS, N	1	1	1	0	1
MS, S	3	2	1	1	2
TX, N	0	0	0	0	0
TX, E	2	2	1	1	2
TX, S	0	0	0	0	0
TX, W	1	1	0	1	1
6th Cir.	6+T/P	5,1T,2T/P	2+T/P	3+1T	5,1T,T/P
KY, E	NR	T/P	0	0	0
KY, W	1	1	0	1	1
MI, E	2	2	1	1	2
MI, W	0	0	0	0	0
OH, N	1+T/P	1T+T/P	T/P	1T	1T+T/P
OH, S	NR	0	0	0	0
TN, E	1	1	0	1	1
TN, M	0	0	0	0	0
TN, W	1	1	1	0	1
7th Cir.	5+2T	5+2T	3+1T	1+1T	4+2T
IL, N	3+1T	3+1T	2	1+1T	3+1T
IL, C	0	0	0	0	0
IL, S	1	1	1	0	1
IN, N	1T	1T	1T	0	1T
IN, S	1	1	0	0	0
WI, E	0	0	0	0	0
WI, W	0	0	0	0	0
8th Cir.	4,1T,T/P	2,1T,T/P	1+1T	0	1,1T,T/P
AR, E	2	1	0	0	0
AR, W	1T	1T	1T	0	1T
IA, N	0	0	0	0	0
IA, S	0	0	0	0	0
MN	T/P	T/P	0	T/P	T/P
MO, E	1	1	1	0	1
MO, W	0	0	0	0	0
NE	1	0	0	0	0
ND	0	0	0	0	0
SD	0	0	0	0	0
9th Cir.	9+1T	8+1T	5+1T	3	8+1T
AK	1	1	1	0	1
AZ	0	0	0	0	0
CA, N	0	0	0	0	0
CA, E	0	0	0	0	0
CA, C	4	4	2	2	4
CA, S	0	0	0	0	0
HI	1	1	1	0	1
ID	1	0	0	0	0
MT	1	1	0	1	1
NV	0	0	0	0	0
OR	NR	0	0	0	0
WA, E	NR	0	0	0	0
WA, W	1+1T	1+1T	1+1T	0	1+1T
GU	NR	0	0	0	0
NMI	0	0	0	0	0
10th Cir.	2	2	1	1	2
CO	0	0	0	0	0
KS	0	0	0	0	0
NM	0	0	0	0	0
OK, N	0	0	0	0	0
OK, E	0	0	0	0	0
OK, W	1	1	1	0	1
UT	0	0	0	0	0
WY	1	1	0	1	1
11th Cir.	6+2T	5+1T	4	1	5
AL, N	0	0	0	0	0
AL, M	0	0	0	0	0
AL, S	1	1	0	1	1
FL, N	0	0	0	0	0
FL, M	1T	1T	0	0	0
FL, S	4+1T	3	3*	0	3
GA, N	0	0	0	0	0
GA, M	1	1	1	0	1
GA, S	0	0	0	0	0

* Includes the revised judgeship recommendations for Florida, Southern, from the March 1982 Meeting of the Judicial Conference
T = Temporary judgeship
T/P = Temporary judgeship made permanent

Your Committee reviewed the recommendations of the Subcommittee as well as requests for reconsideration of the recommendations regarding the district courts for the Eastern District of Arkansas and the Southern District of Indiana. The Eastern District of Washington, without any prior request, also asked for a judgeship. Although the Committee realizes that there have been increases in caseloads in these three districts since the periods considered by the Subcommittee, the same might be said of other courts as well. Statistics for periods subsequent to calendar year 1981 will be considered during the next biennial survey.

Recommendation:

> The Committee recommends that the Conference authorize the transmittal to Congress of a request for the additional judgeships as shown in the "Total" columns in Table 2.

Appendix A

UNITED STATES COURTS OF APPEALS

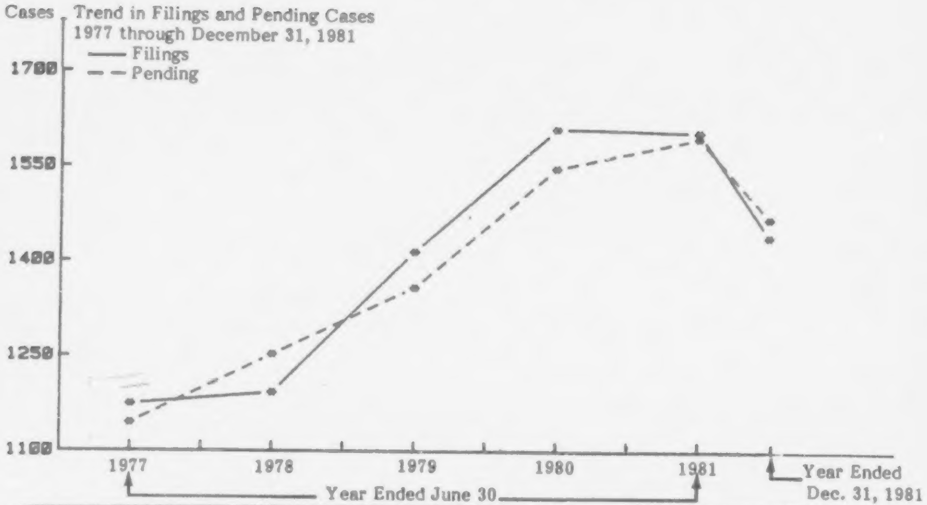
Judgeship Recommendations

DISTRICT OF COLUMBIA

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

		TWELVE MONTH PERIOD ENDED						
		December 31	June 30					
		1981	1981	1980	1979	1978	1977	1981 NUMERICAL STANDING
OVERALL WORKLOAD STATISTICS	Filings	1,439	1,634	1,609	1,415	1,193	1,175	
	Terminations	1,704	1,556	1,420	1,310	1,085	1,381	
	Pending	1,468	1,595	1,547	1,358	1,253	1,145	
	Percent Change in Total Filings – Current Year: Over June ▶		-10.3					12
	Percent Change in Total Filings – Current Year: Over Earlier Years ▶			-10.6	1.7	20.6	22.5	12
	Number of Judgeships/ Number of Panels	11/3.7	11/3.7	11/3.7	11/3.7	9/3.0	9/3.0	
	Number of Vacant Judgeship Months	4.0	0.0	19.3	16.6	0.0	0.0	
ACTIONS PER PANEL: APPEALS FILED	Total	389	437	439	386	398	392	12
	Prisoner	11	17	15	11	13	12	12
	All Other Civil	190	162	211	165	178	152	12
	Criminal	29	26	33	28	47	48	12
	Administrative	159	232	180	182	160	180	1
ACTIONS PER PANEL	PENDING APPEALS	397	435	422	370	418	382	10
ACTIONS PER PANEL: APPEALS TERMINATED	Total	461	424	387	357	362	460	12
	Consolidations & Cross Appeals	106	90	93	124	102	154	
	Without Hearing or Submission	194	174	157	126	137	87	8
	After Hearing or Submission	161	160	137	107	123	219	12
OPINIONS PER JUDGESHIP	Signed	NA	24	20	13	16	16	-
	Unsigned	NA	10	9	10	11	15	-
OTHER	% Reversed or Denied	14.2	17.9	16.8	15.5	13.3	10.2	
	Median Time (Months) from Filing Complete Record to Disposition	11.8	12.3	13.0	13.4	12.8	10.1	9
	Number of Sitting Senior Judges	3	2	1	2	2	2	

NA – This information is compiled only for the year ended June 30.



PARTICIPATIONS IN ORALLY ARGUED CASES AND CASES SUBMITTED ON BRIEFS

Year Ended June 30	Total		By Active Judges		By Senior Judges		By Visiting Judges	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1980	1,588	100.0	1,226	77.2	60	3.8	302	19.0
1981	1,737	100.0	1,387	79.9	57	3.2	293	16.9

ANALYSIS

Additional Judgeships Requested By Circuit 1

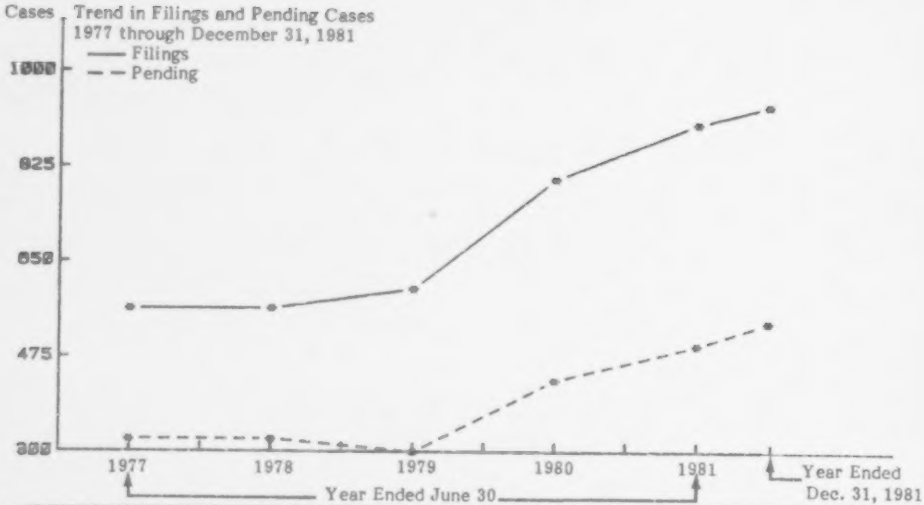
During calendar year 1981, the number of appeals filed in this circuit dropped more than 10.0 percent. Total appeals filed per panel fell from 437 during the year ended June 30, 1981 to 389 per panel in calendar year 1981. This decrease was due to a reduction in administrative agency cases which dropped from 232 per panel during the year ended June 30, 1981 to 159 per panel in calendar year 1981. As in prior years, however, this circuit reported more administrative appeals per panel than any other circuit. The combination of decreased filings, and increased terminations resulted in 397 pending appeals per panel, the third lowest of all the courts of appeals.

The Judicial Conference recommended one additional judgeship for this circuit in 1980 because of the unique nature of the caseload resulting from its location at the seat of the Federal government. With one additional judgeship, calendar year 1981 filings would fall to 360 per panel and the pending caseload would become 367 appeals per panel. The current caseload continues to justify the addition of one judgeship and the Subcommittee's study reaffirms the Judicial Conference's 1980 recommendation of one additional judgeship for the District of Columbia Circuit.

Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 0 **Total** 1

			TWELVE MONTH PERIOD ENDED						
			December 31	June 30					
			1981	1981	1980	1979	1978	1977	1981 NUMERICAL STANDING
OVERALL WORKLOAD STATISTICS	Filings		935	902	801	599	563	563	
	Terminations		893	839	669	622	563	547	
	Pending		537	495	432	300	323	323	
	Percent Change in Total Filings -- Current Year	Over June ▶		3.7					8
		Over Earlier Years ▶			16.7	56.1	66.1	66.1	1
	Number of Judgeships/ Number of Panels		4/1.3	4/1.3	4/1.3	4/1.3	3/1.0	3/1.0	
	Number of Vacant Judgeship Months		0.0	5.5	12.0	8.3	4.0	6.0	
ACTIONS PER PANEL	APPEALS FILED	Total	719	677	601	449	563	563	4
		Prisoner	45	50	48	37	39	37	11
		All Other Civil	475	436	401	275	332	325	1
		Criminal	124	114	104	90	104	122	3
		Administrative	75	77	48	47	88	79	6
	PENDING APPEALS		413	371	324	225	323	323	9
	APPEALS TERMINATED	Total	687	629	502	467	563	547	3
		Consolidations & Cross Appeals	140	104	60	86	94	81	
		Without Hearing or Submission	259	216	170	131	157	130	4
		After Hearing or Submission	288	309	272	250	312	336	7
	OPINIONS PER JUDGESHIP	Signed	NA	66	68	63	80	75	-
		Unsigned	NA	23	12	16	16	22	-
OTHER	% Reversed or Denied		5.1	7.3	18.2	17.4	22.1	18.2	
	Median Time (Months) from Filing Complete Record to Disposition		6.4	6.0	5.8	5.9	6.3	5.8	3
	Number of Sitting Senior Judges		1	1	1	1	1	1	

NA - This information is compiled only for the year ended June 30.



PARTICIPATIONS IN ORALLY ARGUED CASES AND CASES SUBMITTED ON BRIEFS

Year Ended June 30	Total		By Active Judges		By Senior Judges		By Visiting Judges	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1980	1,258	100.0	987	78.4	60	4.8	211	16.8
1981	1,207	100.0	930	77.1	80	6.6	197	16.3

ANALYSIS

Additional Judgeships Requested By Circuit 2

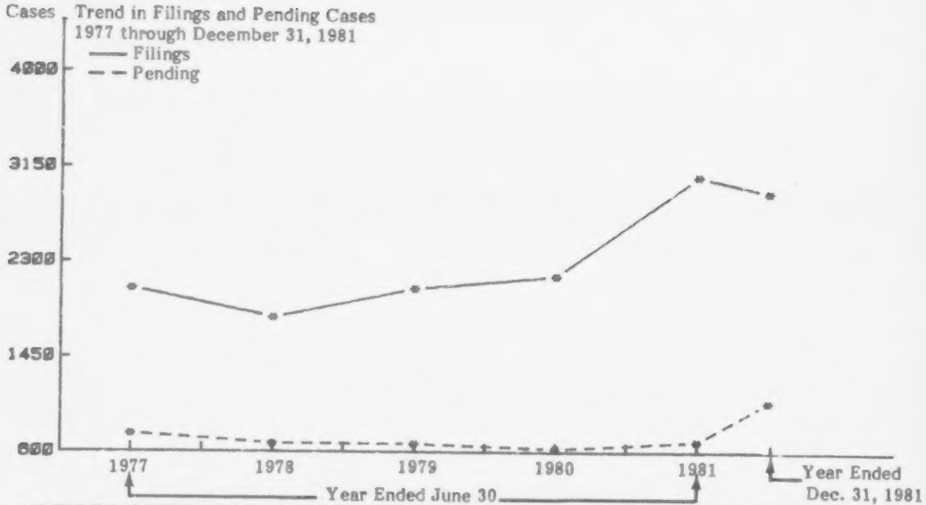
With 719 appeals filed per panel in calendar year 1981, the First Circuit ranked fourth among the courts of appeals. Filings exceeded terminations for the third consecutive year, resulting in 413 pending appeals per panel on December 31, 1981.

The Judicial Conference recommended one additional judgeship for this court in 1980 based on the level of appeals filings. With five judgeships, appeals filed in calendar year 1981 would drop to 561 appeals per three-judge panel and pending appeals would fall to 322 per panel. The court has requested a second additional judgeship during this survey. With six judgeships, the 1981 workload would be redistributed as follows: 468 appeals filed and 269 pending appeals per panel. The Subcommittee agrees that the current workload is excessive for a court of only four judgeships. A complement of six judgeships would provide the court with two full panels with which to handle the caseload and would prevent an excessive buildup in pending appeals. The Subcommittee, therefore, reaffirms the Judicial Conference's 1980 recommendation of one additional judgeship and, further, recommends a second additional judgeship for this court.

Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 1 **Total** 2

			TWELVE MONTH PERIOD ENDED						
			December 31	June 30					1981 NUMERICAL STANDING
			1981	1981	1980	1979	1978	1977	
OVERALL WORKLOAD STATISTICS	Filings		2,916	3,061	2,171	2,058	1,801	2,063	
	Terminations		2,931	2,996	2,214	2,060	1,888	2,093	
	Pending		1,044	696	631	674	676	763	
	Percent Change in Total Filings – Current Year	Over June ▶		-4.7					
		Over Earlier Years ▶			34.3	41.7	61.9	41.3	11 7
	Number of Judgeships/ Number of Panels		11/3.7	11/3.7	11/3.7	11/3.7	9/3.0	9/3.0	
	Number of Vacant Judgeship Months		30.0	15.0	6.6	16.4	0.0	0.0	
ACTIONS PER PANEL	APPEALS FILED	Total	788	835	592	561	600	688	2
		Prisoner	127	121	63	47	48	64	4
		All Other Civil	433	497	323	329	336	338	2
		Criminal	146	140	146	121	149	199	2
		Administrative	82	77	60	64	67	87	5
	PENDING APPEALS		282	190	172	184	225	254	11
	APPEALS TERMINATED	Total	792	817	604	562	629	698	1
		Consolidations & Cross Appeals	132	142	86	85	102	122	
		Without Hearing or Submission	354	355	231	215	221	207	2
		After Hearing or Submission	306	320	287	262	306	369	4
OPINIONS PER JUDGESHIP	Signed		NA	33	30	23	38	43	-
	Unsigned		NA	54	62	54	57	61	-
OTHER	% Reversed or Denied		15.3	15.0	13.2	11.9	14.2	11.6	
	Median Time (Months) from Filing Complete Record to Disposition		3.8	3.8	4.2	4.1	4.3	4.5	1
	Number of Sitting Senior Judges		6	4	7	6	8	8	

NA -- This information is compiled only for the year ended June 30.



Trend in Filings and Pending Cases
1977 through December 31, 1981

PARTICIPATIONS IN ORALLY ARGUED CASES AND CASES SUBMITTED ON BRIEFS

Year Ended June 30	Total		By Active Judges		By Senior Judges		By Visiting Judges	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1980	3,109	100.0	2,041	65.6	600	19.3	468	15.1
1981	3,284	100.0	2,152	65.5	462	14.1	670	20.4

ANALYSIS

Additional Judgeships Requested By Circuit 2

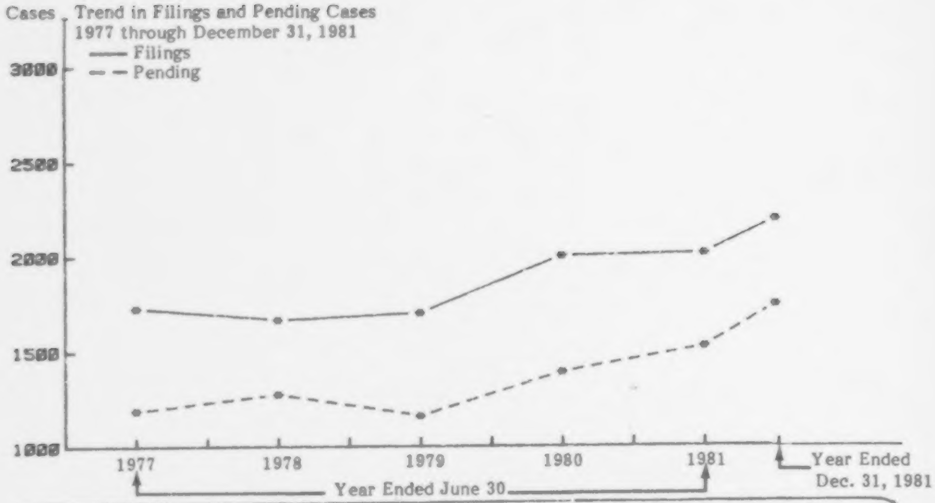
Although the number of appeals filed in the Second Circuit during 1981 fell slightly (4.7 percent), this court ranks second among the courts of appeals in appeals filed per panel. Despite the heavy workload, this court consistently terminates as many or more appeals as are filed each year (with the sole exception of the year ended June 30, 1981). Thus, this court has one of the lowest pending caseloads of all the circuits.

The Judicial Conference recommended two additional judgeships for this court in 1980. With 13 judgeships, the calendar year 1981 workload figures would drop to 673 appeals filed per panel and 241 pending appeals per panel. The current workload continues to justify the additional positions and the Subcommittee recommends the two additional judgeships approved by the Judicial Conference in 1980.

Additional Judgeships Recommended:
By Judicial Conference in 1980 2 **By Subcommittee in 1982** 0 **Total** 2

			TWELVE MONTH PERIOD ENDED						
			December 31	June 30					1981 NUMERICAL STANDING
			1981	1981	1980	1979	1978	1977	
OVERALL WORKLOAD STATISTICS		Filings	2,190	2,013	1,999	1,702	1,667	1,729	
		Terminations	1,716	1,890	1,769	1,816	1,582	1,571	
		Pending	1,741	1,525	1,392	1,162	1,276	1,191	
	Percent Change in Total Filings — Current Year	Over June ▶		8.8					3
		Over Earlier Years ▶			9.6	28.7	31.4	26.7	11
		Number of Judgeships/ Number of Panels	10/3.3	10/3.3	10/3.3	10/3.3	9/3.0	9/3.0	
		Number of Vacant Judgeship Months	11.3	5.2	1.7	8.3	4.2	1.5	
ACTIONS PER PANEL	APPEALS FILED	Total	664	604	600	511	556	576	6
		Prisoner	112	101	114	66	53	81	6
		All Other Civil	360	317	322	289	327	298	5
		Criminal	95	89	94	94	117	136	7
		Administrative	97	97	70	62	59	61	2
	PENDING APPEALS		528	458	418	349	425	397	7
	APPEALS TERMINATED	Total	520	564	531	545	527	524	10
		Consolidations & Cross Appeals	21	63	90	118	113	65	
		Without Hearing or Submission	194	202	196	204	142	97	8
		After Hearing or Submission	305	299	245	223	272	362	5
OPINIONS PER JUDGESHIP		Signed	NA	27	25	19	26	27	-
		Unsigned	NA	8	7	9	7	8	-
OTHER		% Reversed or Denied	14.2	17.1	20.9	18.4	20.7	16.8	
		Median Time (Months) from Filing Complete Record to Disposition	7.3	7.1	7.6	7.4	8.1	7.2	4
		Number of Sitting Senior Judges	3	3	2	3	4	6	

NA — This information is compiled only for the year ended June 30.



PARTICIPATIONS IN ORALLY ARGUED CASES AND CASES SUBMITTED ON BRIEFS

Year Ended June 30	Total		By Active Judges		By Senior Judges		By Visiting Judges	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1980	2,783	100.0	2,478	89.0	147	5.3	158	5.7
1981	2,834	100.0	2,243	79.2	194	6.8	397	14.0

ANALYSIS

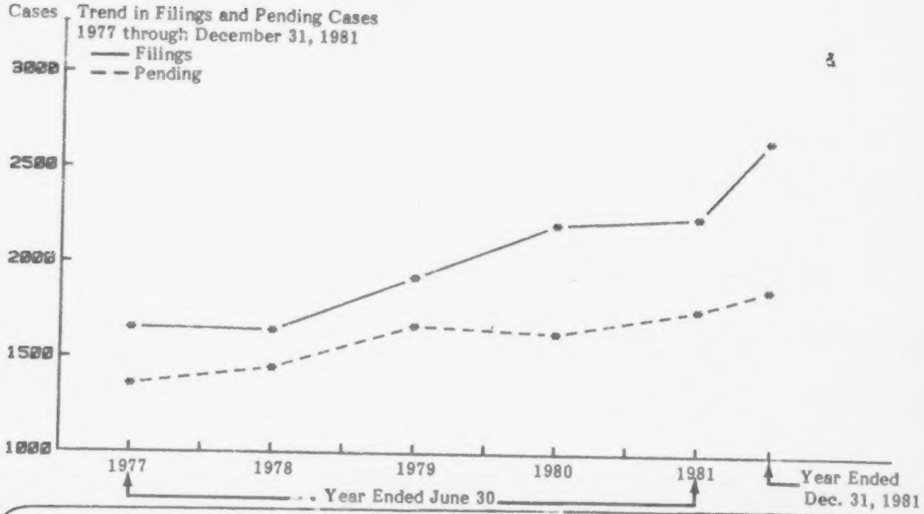
Additional Judgeships Requested By Circuit 2

For the fourth consecutive year, the number of cases appealed to the Third Circuit Court of Appeals increased. The 8.8 percent rise in calendar year 1981 filings resulted in 664 new appeals per three-judge panel, ranking sixth among the 12 courts of appeals. Terminations did not keep pace with filings and so the number of pending appeals grew to a record 1,741, or 528 appeals per panel. The Judicial Conference in 1980 recommended two additional judgeships for this court to meet the growing volume of appeals. With 12 judgeships, the number of calendar year 1981 appeals filed would drop to 548 per panel and pending appeals per panel would become 435. Based on the continuing increase in the workload of the circuit, the Subcommittee recommends the two additional judgeships already approved by the Judicial Conference.

Additional Judgeships Recommended:
By Judicial Conference in 1980 2 **By Subcommittee in 1982** 0 **Total** 2

			TWELVE MONTH PERIOD ENDED						U.S. NUMERICAL STANDING
			December 31	June 30					
			1981	1981	1980	1979	1978	1977	
OVERALL WORKLOAD STATISTICS	Filings		2,651	2,247	2,206	1,925	1,644	1,656	
	Terminations		2,422	2,122	2,242	1,703	1,557	1,473	
	Pending		1,868	1,759	1,634	1,670	1,448	1,361	
	Percent Change in Total Filings Current Year	Over June ▶		18.0					1
		Over Earlier Years ▶			20.2	37.7	61.3	60.1	2
	Number of Judgeships/ Number of Panels		10/3.3	10/3.3	10/3.3	10/3.3	7/2.3	7/2.3	
	Number of Vacant Judgeship Months		5.8	2.8	14.8	26.9	12.0	4.8	
ACTIONS PER PANEL	APPEALS FILED	Total	803	674	662	578	705	710	1
		Prisoner	322	281	290	210	217	209	1
		All Other Civil	318	243	225	224	306	280	8
		Criminal	102	80	94	83	126	169	5
		Administrative	61	70	53	61	56	53	9
	PENDING APPEALS		566	528	490	501	621	583	4
	APPEALS TERMINATED	Total	734	637	673	511	667	631	2
		Consolidations & Cross Appeals	94	80	83	51	74	18	
		Without Hearing or Submission	413	330	332	251	372	178	1
		After Hearing or Submission	227	227	258	209	221	435	11
OPINIONS PER JUDGESHIP	Signed		NA	26	23	27	20	44	-
	Unsigned		NA	49	63	43	51	96	-
OTHER	% Reversed or Denied		17.6	17.2	14.8	19.1	16.2	12.5	
	Median Time (Months) from Filing Complete Record to Disposition		7.8	8.1	10.1	11.1	9.9	8.9	5
	Number of Sitting Senior Judges		3	3	2	3	3	3	

NA - This information is compiled only for the year ended June 30.



PARTICIPATIONS IN ORALLY ARGUED CASES AND CASES SUBMITTED ON BRIEFS

Year Ended June 30	Total		By Active Judges		By Senior Judges		By Visiting Judges	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1980	1,977	100.0	1,563	79.1	168	8.5	246	12.4
1981	2,171	100.0	1,793	82.6	233	10.7	145	6.7

ANALYSIS

Additional Judgeships Requested By Circuit 1

During calendar year 1981, filings in the Fourth Circuit Court of Appeals rose to 2,651 or 803 per authorized three-judge panel. This level of filings was the highest among all courts of appeals. During the year ended June 30, 1981, filings numbered only 674 per panel.

The court has responded to the increased filings by substantially increasing the termination rate. In calendar year 1981, the court disposed of 734 appeals per panel which was the second largest termination figure among all courts of appeals.

After seeing a reduction in its pending caseload in 1980, the court has experienced an increase of 14.3 percent in its backlog since June 30, 1980. The current pending caseload of 566 per panel is the fourth largest among the courts.

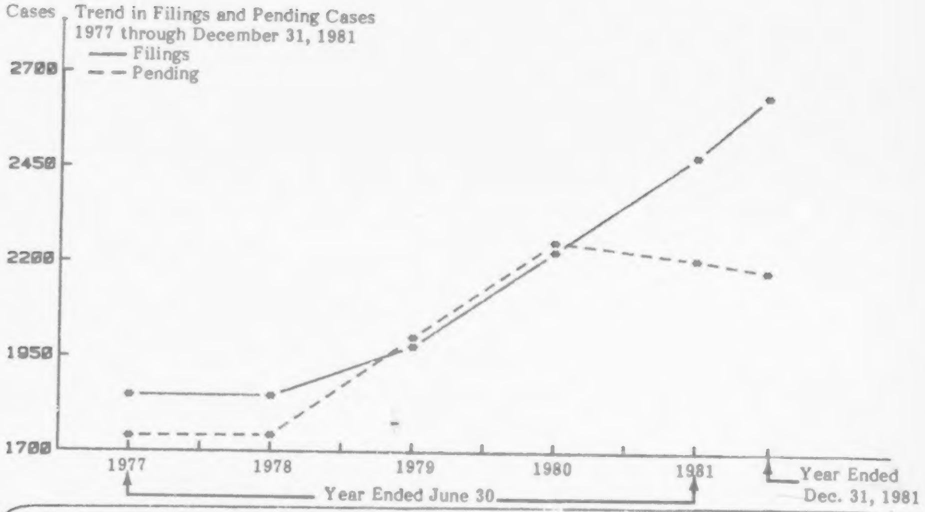
The court has now requested that one additional judgeship be created and the Judicial Council has agreed with that request. It would appear that the level of filings in this court is more than sufficient to justify creation of an additional judgeship. Even if prisoner appeals, which make up 40 percent of the docket, were eliminated entirely, the filings in calendar year 1981 would still be nearly 500 per panel. The addition of one judgeship to this court would result in filings of 723 per panel and a pending caseload of 509 per panel. The Subcommittee agrees with the court and Judicial Council that one additional judgeship should be created.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 1 **Total** 1

			TWELVE MONTH PERIOD ENDED						U.S. NUMERICAL STANDING
			December 31	June 30					
			1981	1981	1980	1979	1978	1977	
OVERALL WORKLOAD STATISTICS		Filings	2,640	2,491	2,229	1,979	1,848	1,849	
		Terminations	2,889	2,526	1,977	1,720	1,845	1,610	
		Pending	2,178	2,239	2,255	2,003	1,744	1,741	
	Percent Change in Total Filings Current Year	Over June ▶		6.4					7
		Over Earlier Years ▶			18.4	33.4	42.9	42.8	6
		Number of Judgeships/ Number of Panels	14/4.7	14/4.7	14/4.7	14/4.7	14/4.7	14/4.7	
		Number of Vacant Judgeship Months	17.5	NA	NA	NA	NA	NA	
** ACTIONS PER PANEL	APPEALS FILED	Total	562	532	478	424	396	396	10
		Prisoner	60	51	42	38	39	54	10
		All Other Civil	360	332	300	250	218	210	5
		Criminal	74	78	91	88	92	90	11
		Administrative	68	71	45	48	47	42	8
	PENDING APPEALS		463	473	483	429	374	373	8
	APPEALS TERMINATED	Total	615	541	424	369	395	345	5
		Consolidations & Cross Appeals	106	73	47	36	31	25	
		Without Hearing or Submission	174	148	119	103	113	82	10
		After Hearing or Submission	335	320	258	230	251	238	1
	OPINIONS PER JUDGESHIP	Signed	NA	NA	NA	NA	NA	NA	-
		Unsigned	NA	NA	NA	NA	NA	NA	-
OTHER		% Reversed or Denied	21.4	NA	NA	NA	NA	NA	
		Median Time (Months) from Filing Complete Record to Disposition	9.4	NA	NA	NA	NA	NA	7
		Number of Sitting Senior Judges	5	NA	NA	NA	NA	NA	

NA — This information is compiled only for the year ended June 30.

** - Computations based on judgeships authorized on October 1, 1981.



PARTICIPATIONS IN ORALLY ARGUED CASES AND CASES SUBMITTED ON BRIEFS

Year Ended June 30	Total		By Active Judges		By Senior Judges		By Visiting Judges	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1980	NA							
1981	NA							

ANALYSIS

Additional Judgeships Requested By Circuit 0

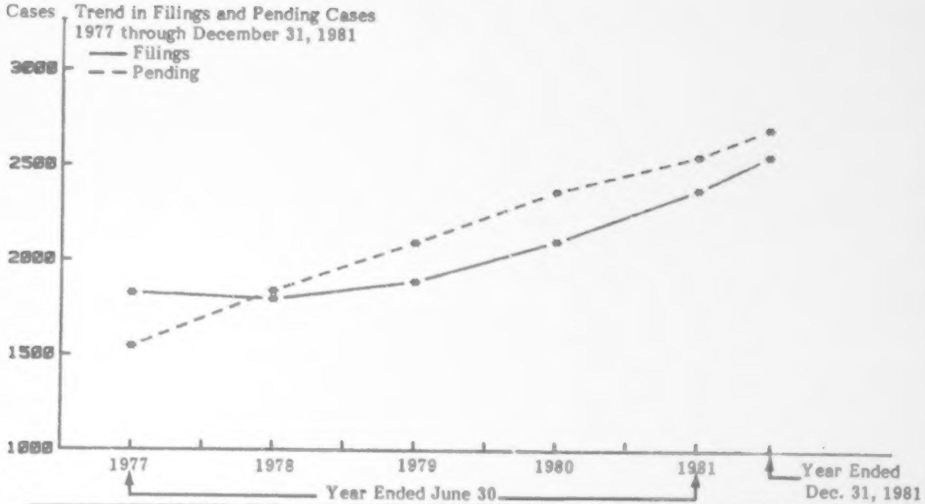
Filings in the Fifth Circuit Court of Appeals rose to 2,640 in calendar year 1981, or 562 per authorized three-judge panel. This ranked tenth among the 12 courts of appeals. During the year, the court managed to terminate over 600 appeals per panel resulting in a pending caseload of 463 appeals per panel on December 31, 1981. This pending level ranks eighth among all courts.

The court and the Judicial Council did not request additional judgeships during the current survey. The Subcommittee agrees that none are required. Since the reorganized Fifth Circuit has only been in operation since October 1, 1981, it is too early to make an accurate assessment of judgeship needs.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

			TWELVE MONTH PERIOD ENDED						
			December 31	June 30					[illegible] NUMERICAL STANDING
			1981	1981	1980	1979	1978	1977	
OVERALL WORKLOAD STATISTICS	Filings		2,554	2,376	2,103	1,889	1,795	1,827	
	Terminations		2,255	2,199	1,832	1,633	1,503	1,425	
	Pending		2,698	2,553	2,366	2,095	1,839	1,547	
	Percent Change in Total Filings Current Year	Over June ▶		7.5					5
		Over Earlier Years ▶			21.4	35.2	42.3	39.8	8
	Number of Judgeships/ Number of Panels		11/3.7	11/3.7	11/3.7	11/3.7	9/3.0	9/3.0	
	Number of Vacant Judgeship Months		12.0	8.9	12.8	34.1	9.3	5.7	
ACTIONS PER PANEL	APPEALS FILED	Total	690	648	574	515	598	609	5
		Prisoner	160	149	115	114	93	79	3
		All Other Civil	367	326	299	240	293	317	4
		Criminal	92	96	95	97	152	124	8
		Administrative	71	77	65	64	60	89	7
	PENDING APPEALS		729	696	645	571	613	516	1
	APPEALS TERMINATED	Total	609	597	500	445	501	475	6
		Consolidations & Cross Appeals	75	79	37	36	36	62	
		Without Hearing or Submission	236	186	167	163	191	121	6
		After Hearing or Submission	298	332	296	246	274	292	6
	OPINIONS PER JUDGESHIP	Signed	NA	20	20	18	17	19	-
		Unsigned	NA	90	76	42	8	44	-
OTHER	% Reversed or Denied		16.1	16.9	14.5	16.0	13.0	12.8	
	Median Time (Months) from Filing Complete Record to Disposition		15.7	17.2	16.8	9.7	9.0	7.2	11
	Number of Sitting Senior Judges		4	4	3	2	1	1	

NA – This information is compiled only for the year ended June 30.



PARTICIPATIONS IN ORALLY ARGUED CASES AND CASES SUBMITTED ON BRIEFS

Year Ended June 30	Total		By Active Judges		By Senior Judges		By Visiting Judges	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1980	3,399	100.0	2,943	86.6	421	12.4	35	1.0
1981	4,061	100.0	3,191	78.6	411	10.1	459	11.3

ANALYSIS

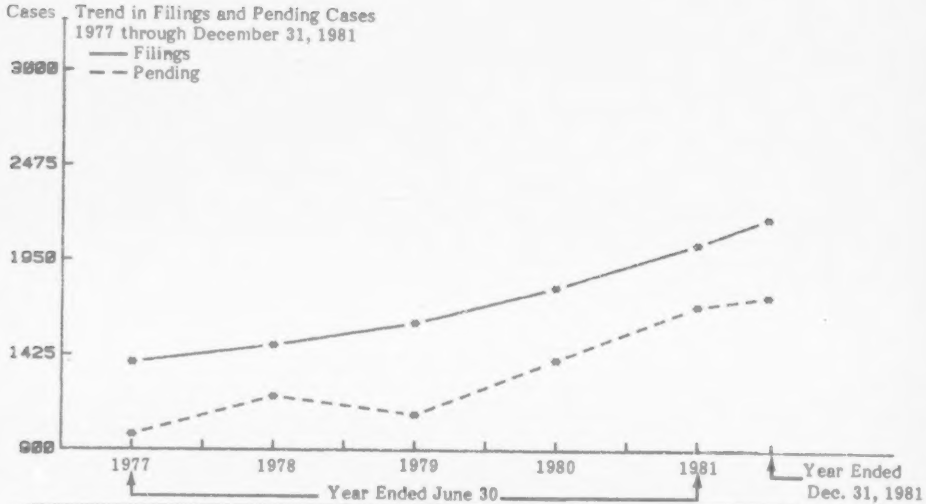
Additional Judgeships Requested By Circuit 4

The number of appeals filed in the Sixth Circuit has increased steadily each year since 1978 and numbered 2,554 during calendar year 1981. With 690 appeals filed per panel, this court ranks fifth among all courts of appeals. A large number of new appeals each year are filed by prisoners. Despite one vacancy, the court terminated 609 appeals per panel in 1981 with the assistance of senior judges. The court ranks first in the number of pending appeals per panel with 729. The court and Judicial Council have requested two judgeships in addition to the two recommended by the Judicial Conference in 1980. With the two additional judgeships approved by the Judicial Conference, workloads per panel are reduced to 589 filings and 623 pending cases. With four additional judgeships for a total of 15, the 1981 workload becomes 511 filings and 540 pending appeals per panel. Based on the current workload levels, the Subcommittee recommends an additional four judgeships for this court including two previously approved by the Judicial Conference.

Additional Judgeships Recommended:
By Judicial Conference in 1980 2 **By Subcommittee in 1982** 2 **Total** 4

			TWELVE MONTH PERIOD ENDED						[illegible] NUMERICAL STANDING
			December 31	June 30					
			1981	1981	1980	1979	1978	1977	
OVERALL WORKLOAD STATISTICS		Filings	2,180	2,038	1,799	1,603	1,480	1,386	
		Terminations	2,006	1,743	1,497	1,703	1,269	1,294	
		Pending	1,747	1,695	1,400	1,098	1,198	987	
	Percent Change in Total Filings Current Year	Over June ▶		7.0					6
		Over Earlier Years ▶			21.2	36.0	47.3	57.3	3
		Number of Judgeships/ Number of Panels	9/3.0	9/3.0	9/3.0	9/3.0	8/2.7	8/2.7	
		Number of Vacant Judgeship Months	20.3	12.0	5.4	8.3	0.0	0.0	
ACTIONS PER PANEL	APPEALS FILED	Total	727	679	600	534	555	520	3
		Prisoner	168	161	133	56	59	66	2
		All Other Civil	350	349	316	297	308	259	7
		Criminal	100	90	91	112	131	137	6
		Administrative	89	79	60	69	57	58	4
	PENDING APPEALS		582	555	467	366	449	370	3
	APPEALS TERMINATED	Total	669	551	499	568	476	485	4
		Consolidations & Cross Appeals	114	101	83	138	102	32	
		Without Hearing or Submission	286	227	150	178	131	97	3
		After Hearing or Submission	269	253	266	252	243	356	9
	OPINIONS PER JUDGESHIP	Signed	NA	28	33	29	31	38	-
		Unsigned	NA	56	54	54	49	66	-
OTHER		% Reversed or Denied	22.4	23.1	19.9	18.9	25.1	18.3	
		Median Time (Months) from Filing Complete Record to Disposition	9.1	8.5	8.5	8.4	7.8	6.9	6
		Number of Sitting Senior Judges	2	0	1	1	2	3	

NA -- This information is compiled only for the year ended June 30.



PARTICIPATIONS IN ORALLY ARGUED CASES AND CASES SUBMITTED ON BRIEFS

Year Ended June 30	Total		By Active Judges		By Senior Judges		By Visiting Judges	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1980	2,464	100.0	2,032	82.4	53	2.2	379	15.4
1981	2,465	100.0	1,915	77.7	-	-	550	22.3

ANALYSIS

Additional Judgeships Requested By Circuit 2

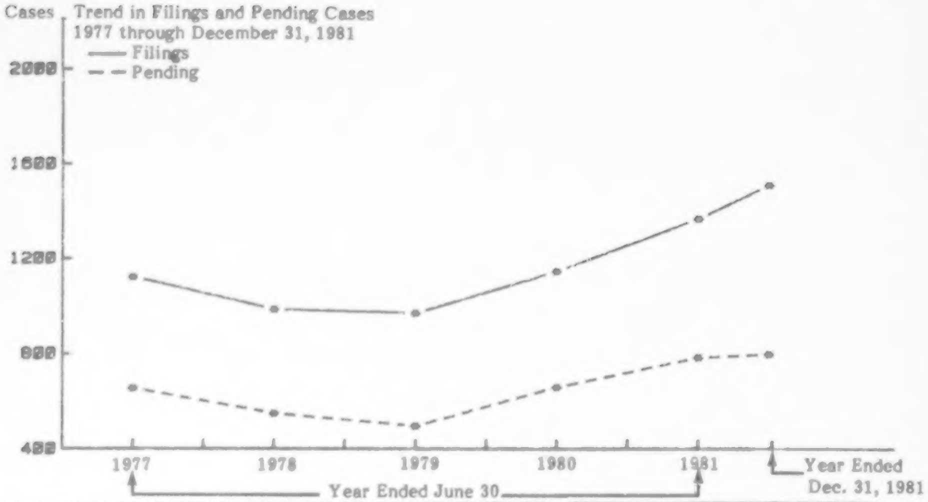
Filings have risen steadily over the past five years and reached 727 per panel in calendar year 1981, ranking this circuit third among the 12 courts of appeals. With two senior judges helping to offset judgeship vacancies, terminations rose 15.1 percent to 669 per panel. Nevertheless, the number of pending appeals per panel rose an additional 3.0 percent to 582.

The Judicial Conference recommended two additional judgeships for the Seventh Circuit in 1980. The current workload continues to justify two additional judgeships. With 11 judges, filings would be reduced to a more manageable 595 per panel, while pending appeals would be reduced to 476 per panel. The circuit has not requested any judgeships in addition to the two previously recommended by the Judicial Conference. The Subcommittee, again, recommends a total of two additional judgeships for this circuit.

Additional Judgeships Recommended:
By Judicial Conference in 1980 2 **By Subcommittee in 1982** 0 **Total** 2

		TWELVE MONTH PERIOD ENDED						[illegible]
		December 31	June 30					
		1981	1981	1980	1979	1978	1977	
OVERALL WORKLOAD STATISTICS	Filings	1,510	1,368	1,147	970	986	1,123	
	Terminations	1,472	1,244	983	1,022	1,093	1,059	
	Pending	799	785	661	497	549	656	
	Percent Change in Total Filings Current Year — Over June ▶		10.4					
	Percent Change in Total Filings Current Year — Over Earlier Years ▶			31.6	55.7	53.1	34.5	2 10
	Number of Judgeships/ Number of Panels	9/3.0	9/3.0	9/3.0	9/3.0	8/2.7	8/2.7	
	Number of Vacant Judgeship Months	12.0	12.0	14.4	11.3	4.3	0.0	
ACTIONS PER PANEL	APPEALS FILED — Total	503	456	382	323	370	421	11
	APPEALS FILED — Prisoner	86	76	54	47	60	71	7
	APPEALS FILED — All Other Civil	292	247	221	184	192	216	11
	APPEALS FILED — Criminal	78	79	62	59	84	96	10
	APPEALS FILED — Administrative	47	54	45	33	34	38	10
	PENDING APPEALS	266	262	220	166	206	246	12
	APPEALS TERMINATED — Total	491	415	328	341	410	397	11
	APPEALS TERMINATED — Consolidations & Cross Appeals	64	46	48	60	86	43	
	APPEALS TERMINATED — Without Hearing or Submission	150	135	81	98	93	91	12
	APPEALS TERMINATED — After Hearing or Submission	277	234	199	183	231	263	8
	OPINIONS PER JUDGESHIP — Signed	NA	43	36	32	42	45	-
	OPINIONS PER JUDGESHIP — Unsigned	NA	28	24	27	31	34	-
OTHER	% Reversed or Denied	17.6	17.5	17.3	17.5	19.8	18.4	
	Median Time (Months) from Filing Complete Record to Disposition	6.0	5.6	4.9	4.6	5.0	4.4	2
	Number of Sitting Senior Judges	1	1	2	3	3	3	

NA – This information is compiled only for the year ended June 30.



PARTICIPATIONS IN ORALLY ARGUED CASES AND CASES SUBMITTED ON BRIEFS

Year Ended June 30	Total		By Active Judges		By Senior Judges		By Visiting Judges	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1980	2,041	100.0	1,701	83.3	61	3.0	279	13.7
1981	2,168	100.0	1,788	82.5	118	5.4	262	12.1

ANALYSIS

Additional Judgeships Requested By Circuit 1

Filings in this court have increased substantially over the last two years and now number 503 per authorized three-judge panel. This level of filings ranks 11th among the 12 courts of appeals. During calendar year 1981, the court terminated 491 appeals per panel, just slightly less than the number filed. This resulted in a pending caseload of 266 per panel, substantially more than were pending two years ago but lowest among all courts.

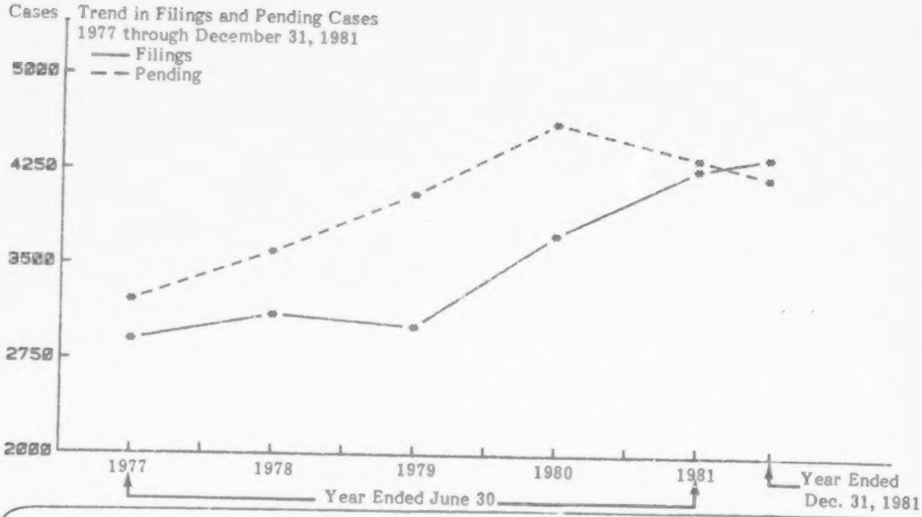
The court and the Eighth Circuit Judicial Council have recommended that one additional judgeship be created for this court. While the workload levels are among the lowest in the country, the rate of increasing filings is among the highest, especially over recent years. The addition of one judgeship to this court would result in filings per panel of 453 and pending of 240 per panel.

The current level of filings is sufficient to justify the court's request for an additional judgeship and there is no reason to expect filings to decline. Therefore, the Subcommittee recommends one additional judgeship for the Eighth Circuit Court of Appeals.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 1 **Total** 1

			TWELVE MONTH PERIOD ENDED						U.S. NUMERICAL STANDING
			December 31	June 30					
			1981	1981	1980	1979	1978	1977	
OVERALL WORKLOAD STATISTICS	Filings		4,358	4,262	3,738	3,010	3,099	2,905	
	Terminations		4,672	4,536	3,177	2,551	2,715	2,659	
	Pending		4,198	4,344	4,618	4,057	3,598	3,214	
	Percent Change in Total Filings Current Year	Over June ▶		2.3					9
		Over Earlier Years ▶			16.6	44.8	40.6	50.0	5
	Number of Judgeships/ Number of Panels		23/7.7	23/7.7	23/7.7	23/7.7	13/4.3	13/4.3	
	Number of Vacant Judgeship Months		0.0	3.8	80.3	83.0	7.3	15.6	
ACTIONS PER PANEL	APPEALS FILED	Total	566	556	488	393	715	670	9
		Prisoner	64	53	43	31	46	59	9
		All Other Civil	307	304	265	198	369	319	9
		Criminal	104	111	113	103	202	202	4
		Administrative	91	88	67	61	98	90	3
	PENDING APPEALS		545	567	602	529	830	742	6
	APPEALS TERMINATED	Total	607	592	414	333	627	514	7
		Consolidations & Cross Appeals	106	87	71	68	103	89	
		Without Hearing or Submission	240	234	172	105	237	107	5
		After Hearing or Submission	261	271	171	160	287	418	10
	OPINIONS PER JUDGESHIP	Signed	NA	33	23	20	32	32	-
		Unsigned	NA	48	29	7	50	20	-
OTHER	% Reversed or Denied		17.2	18.4	18.3	16.7	15.6	14.3	
	Median Time (Months) from Filing Complete Record to Disposition		15.8	17.3	17.4	15.5	10.8	9.8	12
	Number of Sitting Senior Judges		7	7	9	7	7	7	

NA — This information is compiled only for the year ended June 30.



PARTICIPATIONS IN ORALLY ARGUED CASES AND CASES SUBMITTED ON BRIEFS

Year Ended June 30	Total		By Active Judges		By Senior Judges		By Visiting Judges	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1980	4,472	100.0	2,860	63.9	460	10.3	1,152	25.8
1981	6,081	100.0	4,173	68.8	423	7.0	1,485	24.2

ANALYSIS

Additional Judgeships Requested By Circuit 5

During calendar year 1981, filings in this circuit were 2.3 percent above case filings during the year ended June 30, 1981. This increase resulted in 566 filings per authorized three-judge panel, ninth among the 12 courts of appeals. The court has continued to increase its disposition rate and in calendar year 1981 terminated 607 appeals per panel. This resulted in a slight reduction in the pending caseload to 545 per panel, sixth among the 12 courts of appeals.

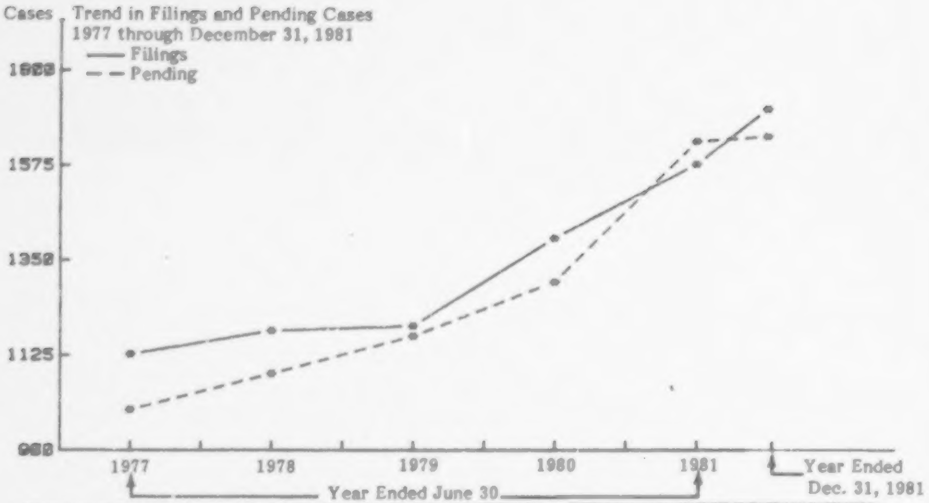
In 1980, the Judicial Conference approved three temporary judgeships for this court on the basis of the backlog which existed at that time. During the current judgeship survey, the court originally requested five additional judgeships. After a preliminary analysis by the Subcommittee, the Ninth Circuit Judicial Council recommended that the three temporary judgeships approved in 1980 be changed to three permanent judgeships and that two additional permanent judgeships be authorized.

With the addition of five judgeships to this court, the calendar year 1981 filings would be 467 per panel and the pending caseload would drop to 450 per panel. These workload levels are more consistent with the per panel workload in most other courts, taking into account the additional judgeships currently recommended by the Subcommittee. Therefore, the Subcommittee recommends that the three temporary judgeships recommended by the Judicial Conference in 1980, be changed to permanent and that two additional permanent judgeships be created.

Additional Judgeships Recommended:
By Judicial Conference in 1980 3T **By Subcommittee in 1982** 3T to 3P&2 **Total** 5

		TWELVE MONTH PERIOD ENDED						[illegible]
		December 31	June 30					
		1981	1981	1980	1979	1978	1977	
OVERALL WORKLOAD STATISTICS	Filings	1,707	1,577	1,402	1,194	1,183	1,128	
	Terminations	1,516	1,244	1,274	1,106	1,098	1,094	
	Pending	1,642	1,631	1,298	1,170	1,082	997	
	Percent Change in Total Filings Current Year	Over June ▶	8.2					
		Over Earlier Years ▶		21.8	43.0	44.3	51.3	4 4
	Number of Judgeships/ Number of Panels	8/2.7	8/2.7	8/2.7	8/2.7	7/2.3	7/2.3	
	Number of Vacant Judgeship Months	0.0	0.0	4.6	8.3	5.9	3.0	
ACTIONS PER PANEL — APPEALS FILED	Total	632	591	526	448	507	483	7
	Prisoner	124	138	100	77	75	93	5
	All Other Civil	376	342	259	227	288	230	3
	Criminal	86	96	127	104	102	127	9
	Administrative	46	55	40	40	42	33	11
	PENDING APPEALS	608	612	487	439	464	427	2
APPEALS TERMINATED	Total	561	457	478	415	471	469	9
	Consolidations & Cross Appeals	20	18	26	82	127	80	
	Without Hearing or Submission	227	183	128	96	159	98	7
	After Hearing or Submission	314	266	324	237	185	291	3
OPINIONS PER JUDGESHIP	Signed	NA	57	66	44	48	50	-
	Unsigned	NA	29	35	30	7	18	-
OTHER	% Reversed or Denied	17.1	14.4	13.7	13.8	14.2	11.8	
	Median Time (Months) from Filing Complete Record to Disposition	12.3	13.1	12.5	11.3	13.8	8.7	10
	Number of Sitting Senior Judges	3	3	3	4	4	3	

NA - This information is compiled only for the year ended June 30.



PARTICIPATIONS IN ORALLY ARGUED CASES AND CASES SUBMITTED ON BRIEFS

Year Ended June 30	Total		By Active Judges		By Senior Judges		By Visiting Judges	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1980	1,699	100.0	1,423	83.7	188	11.1	88	5.2
1981	2,083	100.0	1,788	85.9	188	9.0	107	5.1

ANALYSIS

Additional Judgeships Requested By Circuit 2

Filings in this court of appeals have increased substantially over the last two and one half years and, in calendar year 1981, numbered 632 per panel. This was seventh largest among the 12 courts of appeals. The court has increased its disposition rate, but despite the 561 terminations per panel, the pending has grown to the second largest among all courts at 608 per panel.

In 1980, the Judicial Conference recommended one additional judgeship for this court. During the current survey the court requested three additional judgeships and the Tenth Circuit Judicial Council recommended two.

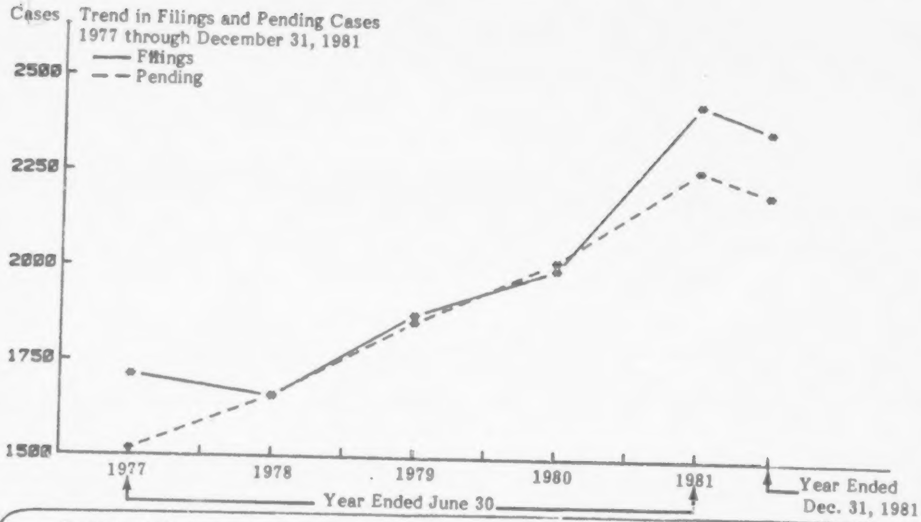
With two additional judgeships, calendar year 1981 filings would be 512 per panel and the pending caseload would become 493. These workload levels would be more manageable than the current levels. The Subcommittee, therefore, recommends two additional judgeships (including the one recommended by the Judicial Conference in 1980).

Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 1 **Total** 2

			TWELVE MONTH PERIOD ENDED						
			December 31	June 30					
			1981	1981	1980	1979	1978	1977	1981 NUMERICAL STANDING
OVERALL WORKLOAD STATISTICS	Filings		2,365	2,433	1,996	1,875	1,659	1,714	
	Terminations		2,280	2,191	1,833	1,682	1,516	1,578	
	Pending		2,198	2,261	2,018	1,855	1,662	1,519	
	Percent Change in Total Filings Current Year	Over June ▶		-2.8					10
		Over Earlier Years ▶			18.5	26.1	42.6	38.0	9
	Number of Judgeships/ Number of Panels		12/4.0	12/4.0	12/4.0	12/4.0	12/4.0	12/4.0	
	Number of Vacant Judgeship Months		NA	NA	NA	NA	NA	NA	
** ACTIONS PER PANEL	APPEALS FILED	Total	591	608	499	469	415	429	8
		Prisoner	66	69	53	56	46	58	8
		All Other Civil	305	307	256	235	190	200	10
		Criminal	185	188	138	127	143	122	1
		Administrative	35	44	52	51	36	49	12
	PENDING APPEALS		550	565	505	464	416	380	5
	APPEALS TERMINATED	Total	570	548	458	421	379	395	9
		Consolidations & Cross Appeals	93	73	38	37	38	26	
		Without Hearing or Submission	151	153	131	110	94	102	11
		After Hearing or Submission	326	322	289	274	247	267	2
	OPINIONS PER JUDGESHIP	Signed	NA	NA	NA	NA	NA	NA	-
		Unsigned	NA	NA	NA	NA	NA	NA	-
OTHER	% Reversed or Denied		19.0	NA	NA	NA	NA	NA	
	Median Time (Months) from Filing Complete Record to Disposition		9.6	NA	NA	NA	NA	NA	8
	Number of Sitting Senior Judges		6	NA	NA	NA	NA	NA	

NA — This information is compiled only for the year ended June 30.

** - Computations based on judgeships authorized on October 1, 1981.



PARTICIPATIONS IN ORALLY ARGUED CASES AND CASES SUBMITTED ON BRIEFS

Year Ended June 30	Total		By Active Judges		By Senior Judges		By Visiting Judges	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1980	NA							
1981	NA							

ANALYSIS

Additional Judgeships Requested By Circuit 0

In calendar year 1981, there were 2,365 appeals filed in this court or 591 per authorized three-judge panel. This was eighth among the 12 courts of appeals. The pending caseload in this court is fifth among all courts at 550 per panel.

The court and the Eleventh Circuit Judicial Council have not requested additional judgeships during the current survey. The Subcommittee agrees that no additional judgeships are required. Since the Eleventh Circuit Court of Appeals has only been in existence since October 1, 1981, it is too early to assess judgeship needs accurately.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

Appendix B

UNITED STATES DISTRICT COURTS

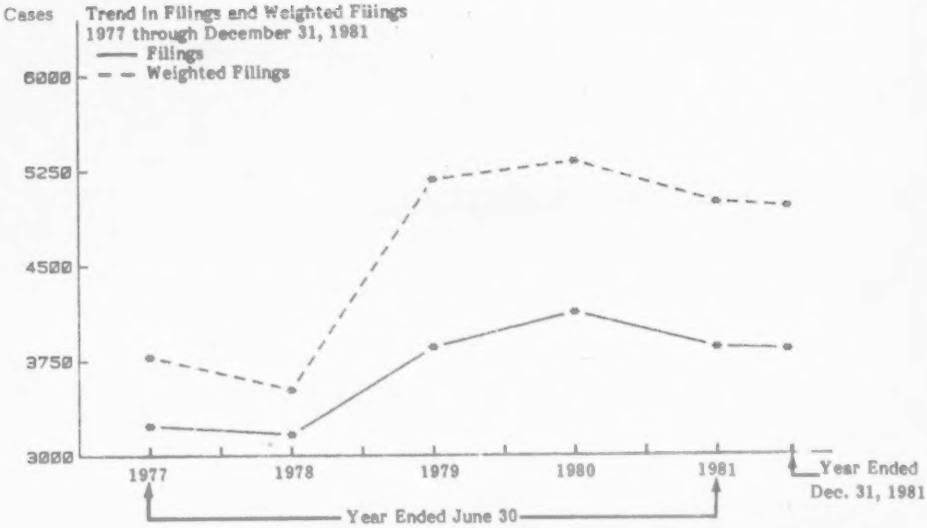
Judgeship Recommendations

DISTRICT OF COLUMBIA CIRCUIT
United States District Court

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		3,838	3,855	4,132	3,869	3,181	3,256		
	Terminations		3,848	3,842	4,047	3,496	3,218	3,165		
	Pending		2,920	2,694	2,671	2,588	2,215	2,252		
	Percent Change in Total Filings Current Year	Over June ▶		-.5					77	
		Over Earlier Years ▶			-7.1	-.8	20.7	17.9	69	
	Number of Judgeships		15	15	15	15	15	15		
	Vacant Judgeship Months		1.0	.2	12.0	22.9	18.7	3.3		
ACTIONS PER JUDGESHIP	FILINGS	Total	256	257	275	258	212	217	89	
		Civil	225	225	236	208	164	164	86	
		Criminal	31	32	39	50	49	53	66	
	Pending Cases		195	179	178	173	148	150	93	
	Weighted Filings		328	333	354	345	235	252	72	
	Terminations		257	256	270	233	215	211	86	
	Trials Completed		40	41	43	43	44	34	46	
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.3	3.3	3.4	3.2	3.1	3.6	24	
		Civil	6	6	6	5	6	6	8	
	From Issue to Trial (Civil Only)		7	9	12	12	12	10	4	
	Number (and %) of Civil Cases Over 3 Years Old		210 (7.8)	249 (10.1)	256 (10.5)	215 (9.2)	182 (9.2)	163 (8.4)		
TRIALS	TOTAL		602	610	640	652	654	515		
	10 - 19 Days		6	12	9	10	9	5		
	20 Days and Over		5	6	6	3	2	–		
OTHER	Number of Defendants Filed		586	601	766	932	889	1,002		
	Number of Diversity Cases Filed		879	733	540	475	377	427		
MDL	Dockets		NA	7	7	8	11	8		
	Cases Pending		NA	355	643	653	243	120		

NA – This information is compiled only for the year ended June 30.

* * *



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Filings in the District of Columbia for calendar year 1981 were slightly lower than during the year ended June 30, 1981. This resulted in 256 filings per authorized judgeship with weighted filings substantially higher at 328. This difference in filings and weighted filings reflects a predominance of the more heavily weighted U.S. cases in the caseload filings for this district. Even with this more heavily weighted caseload, the district has managed to maintain a nearly constant pending backlog over the last four years. As of December 31, 1981, the pending caseload per authorized judgeship was only 195, ranking 93rd among all 95 district courts. Neither the district nor the Judicial Council have requested or recommended additional judgeships during the current survey and the Subcommittee agrees that the 15 authorized judgeships are sufficient for the workload in this district.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

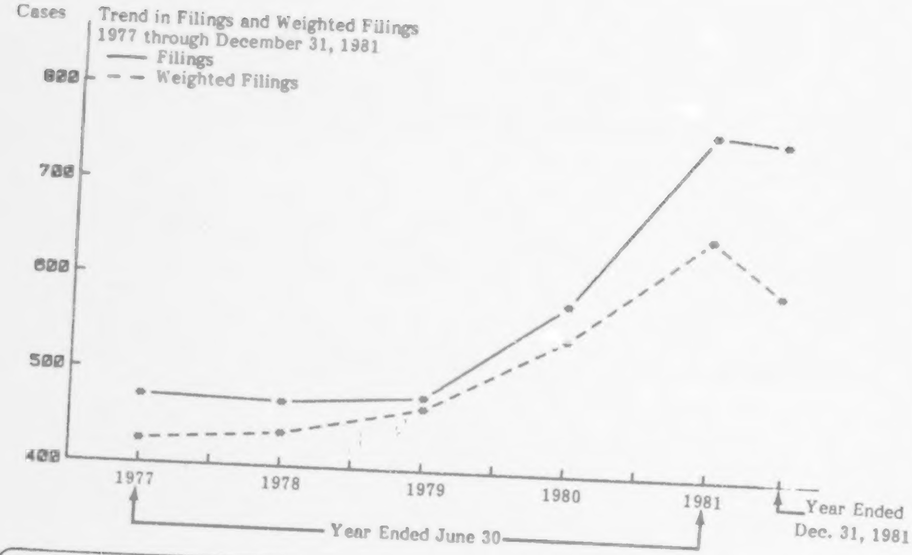
FIRST CIRCUIT
United States District Courts

MAINE

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN U.S. Circuit	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings	758	757	583	478	474	474		
	Terminations	631	652	473	412	313	365		
	Pending	986	943	777	669	603	442		
	Percent Change in Total Filings Current Year	Over June ▶	-1.2					78	5
		Over Earlier Years ▶		30.0	58.6	59.9	59.9	15	2
Number of Judgeships		2	2	2	2	1	1		
Vacant Judgeship Months		9.0	12.0	4.1	7.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS Total	379	354	292	239	474	474	64	4
	FILINGS Civil	360	356	261	203	394	400	56	4
	FILINGS Criminal	19	28	31	36	80	74	89	5
	Pending Cases	493	472	389	335	603	442	28	3
	Weighted Filings	286	327	271	239	436	426	81	4
	Terminations	316	331	237	206	313	365	76	4
	Trials Completed	24	24	22	15	26	17	86	4
MEDIAN TIMES (MONTHS)	From Filing to Disposition: Criminal	9.2	6.4	5.7	8.8	4.0	5.6	94	5
	From Filing to Disposition: Civil	6	10	14	13	10	9	8	1
	From Issue to Trial (Civil Only)	-	-	-	-	-	-	-	-
	Number (and %) of Civil Cases Over 3 Years Old	62 (6.7)	55 (6.2)	47 (6.5)	27 (4.4)	21 (3.8)	3 (2.2)		
TRIALS	TOTAL	48	47	44	30	26	17		
	10 - 19 Days	1	1	3	1	2	2		
	20 Days and Over	1	-	-	-	-	-		
OTHER	Number of Defendants Filed	67	108	96	110	150	96		
	Number of Diversity Cases Filed	169	226	118	114	104	90		
MDL	Dockets	NA	-	-	-	-	-		
	Cases Pending	NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSES

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Vacancies have had a significant impact on this district in the last three and a half years; despite a record number of case terminations the 1981 pending caseload is more than double that of 1977. With help from visiting judges terminations increased to 316 per judgeship and 24 trials were completed per judgeship. Total filings in calendar year 1981 were 379 per judgeship with weighted filings significantly lower at 286 per judgeship. Most of the caseload is made up of contract cases and other real property suits which have a lower than average weight.

When the second judgeship position in this district is filled, the district should be able to handle the workload. The district and the Judicial Council have not requested additional judgeships and the Subcommittee recommends none.

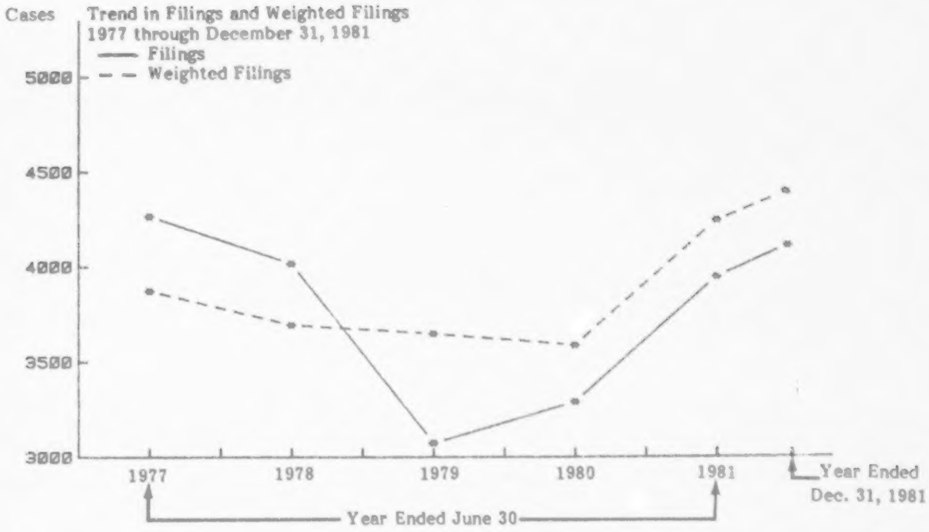
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

MASSACHUSETTS

1982 BIENNIAL JUDGESHIP SURVE
PAGE 1

			TWELVE MONTH PERIOD ENDED							
			December 31	June 30					NUMERICAL STANDING WITHIN U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		4,125	3,956	3,302	3,103	4,037	4,283		
	Terminations		4,472	8,105	4,454	5,669	3,058	3,321		
	Pending		6,178	6,666	10,813	11,973	14,539	13,560		
	Percent Change in Total Filings Current Year	Over June		4.3					53	4
		Over Earlier Years			24.9	32.9	2.2	-9.7	86	5
Number of Judgeships			10	10	10	10	6	6		
Vacant Judgeship Months			.0	.0	.0	19.2	7.5	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	413	396	330	310	673	714	54	3
		Civil	377	359	298	276	603	652	49	3
		Criminal	36	37	32	34	70	62	56	3
	Pending Cases		618	667	1,081	1,197	2,423	2,260	12	2
	Weighted Filings		446	424	359	371	616	646	27	3
	Terminations		447	811	445	567	510	554	23	1
	Trials Completed		41	40	37	25	41	39	42	2
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.8	4.0	4.2	4.4	5.3	7.9	47	2
		Civil	18	51	27	31	23	26	90	4
	From Issue to Trial (Civil Only)		26	31	36	39	31	35	78	3
Number (and %) of Civil Cases Over 3 Years Old			1,021 (17.3)	1,673 (26.3)	5,361 (50.9)	5,314 (45.5)	4,426 (31.1)	2,402 (18.1)		
TRIALS	TOTAL		410	397	365	252	248	233		
	10 - 19 Days		9	15	18	7	2	2		
	20 Days and Over		5	4	7	1	-	3		
OTHER	Number of Defendants Filed		491	536	493	576	543	560		
	Number of Diversity Cases Filed		1,221	1,086	751	635	635	611		
MDL	Dockets		NA	4	3	3	4	4		
	Cases Pending		NA	34	12	20	20	29		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 2 **Recommended By Circuit Council** 1&1T

New case filings continued to rise throughout calendar year 1981. There were 413 cases filed per judgeship with weighted filings slightly higher at 446 per judgeship. The pending caseload of 618 cases per judgeship ranks 12th among U. S. district courts. The district has requested two additional judgeships to handle the heavy monthly filings and backlog but the First Circuit Judicial Council has recommended one permanent and one temporary judgeship. One additional judgeship would reduce filings to 375 per judgeship and weighted filings to 405 per judgeship; two additional judgeships would reduce the per judgeship workload to 344 filings and 372 weighted filings. The adjusted pending caseload would fall to 562 for each of 11 judgeships and 515 for each of 12 judgeships.

On the basis of the current level of filings and weighted filings the Subcommittee recommends one additional permanent judgeship. On the basis of the pending caseload the Subcommittee recommends one five-year temporary judgeship.

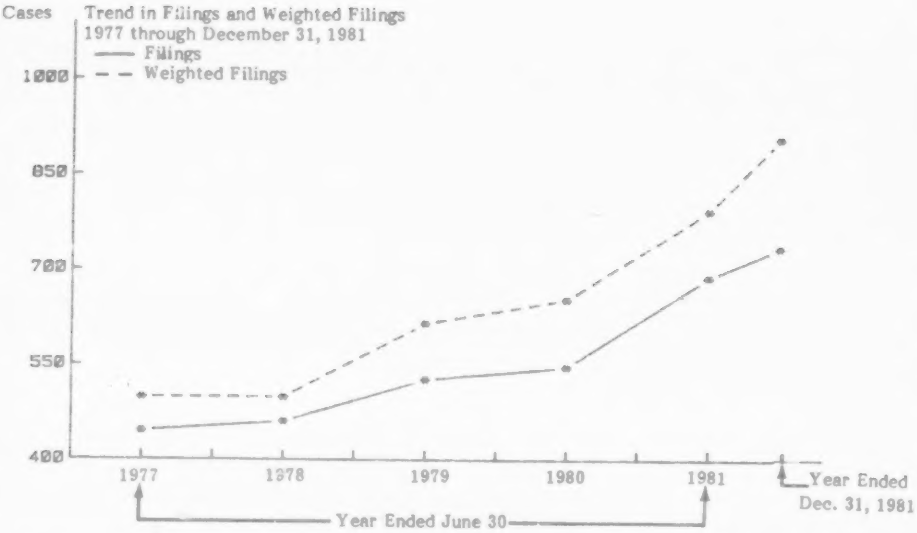
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 1&1T **Total** 1&1T

NEW HAMPSHIRE

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN [illegible]	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		744	698	548	533	463	447		
	Terminations		616	640	477	494	357	418		
	Pending		710	645	587	519	479	373		
	Percent Change in Total Filings Current Year	Over June		6.6					45	3
		Over Earlier Years			35.8	39.6	60.7	66.4	13	1
	Number of Judgeships		2	2	2	2	1	1		
	Vacant Judgeship Months		.0	.0	.0	6.5	8.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	372	349	274	267	463	447	66	5
		Civil	350	330	262	242	423	417	60	5
		Criminal	22	19	12	25	40	30	85	4
	Pending Cases		355	323	294	259	479	373	63	4
	Weighted Filings		447	397	327	308	499	499	26	2
	Terminations		308	320	239	247	357	418	78	5
	Trials Completed		51	54	50	34	41	80	19	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.6	4.7	4.4	3.8	2.2	5.0	80	3
		Civil	7	6	10	9	7	7	24	3
	From Issue to Trial (Civil Only)		18	26	24	26	-	14	60	2
	Number (and %) of Civil Cases Over 3 Years Old		28 (4.0)	23 (3.7)	25 (4.4)	21 (4.2)	8 (1.7)	2 (.5)		
TRIALS	TOTAL		102	108	99	68	41	80		
	10 - 19 Days		1	4	1	7	–	2		
	20 Days and Over		–	1	2	–	–	–		
OTHER	Number of Defendants Filed		59	55	32	60	45	32		
	Number of Diversity Cases Filed		320	295	255	213	159	188		
MDL	Dockets		NA	–	–	–	–	–		
	Cases Pending		NA	–	–	–	–	–		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 0

Filings rose 6.6 percent to 372 per judgeship in 1981; weighted filings were higher at 447 per judgeship due in part to a number of personal injury product liability cases, and civil rights cases. Pending cases of 355 per judgeship ranked 63rd nationwide. The number of trials completed per judgeship was high at 51 each, ranking 19th of all U. S. district courts.

The district has requested one additional judgeship to handle an increasing caseload; however, the First Circuit Judicial Council did not approve the request. The Subcommittee recommends no additional judgeships.

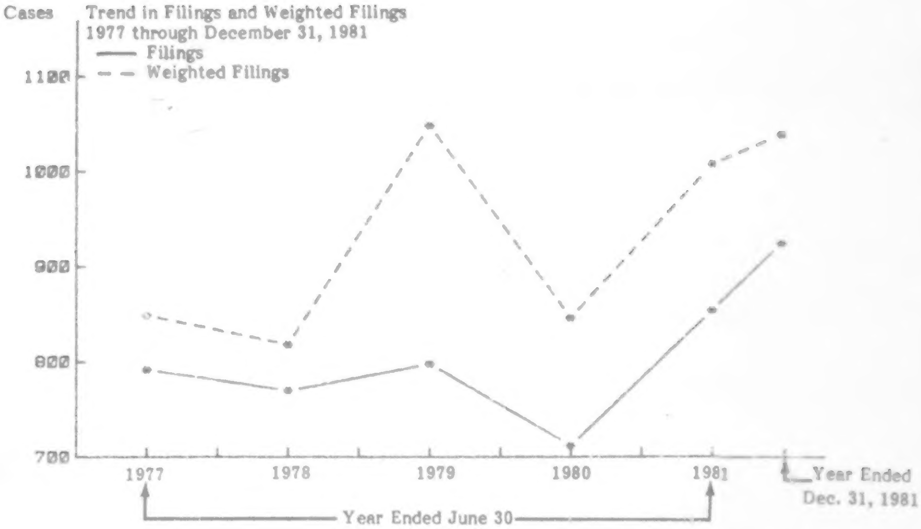
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

RHODE ISLAND

**1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1**

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings	926	856	714	799	772	798		
	Terminations	688	632	622	710	686	569		
	Pending	1,479	1,359	1,135	1,047	958	872		
	Percent Change in Total Filings Current Year — Over June		8.2					37	1
	Over Earlier Years			29.7	15.9	19.9	16.0	74	4
	Number of Judgeships	2	2	2	2	2	2		
	Vacant Judgeship Months	.0	.0	.0	.0	1.0	12.0		
ACTIONS PER JUDGESHIP	FILINGS — Total	463	428	357	400	386	399	31	1
	FILINGS — Civil	407	391	335	379	351	353	35	1
	FILINGS — Criminal	56	37	22	21	35	46	16	1
	Pending Cases	740	630	568	524	479	436	4	1
	Weighted Filings	511	534	423	536	409	424	12	1
	Terminations	344	316	311	355	343	284	69	3
	Trials Completed	40	46	52	48	45	15	46	3
MEDIAN TIMES (MONTHS)	From Filing to Disposition — Criminal	5.3	5.6	7.7	8.5	6.3	5.8	89	4
	From Filing to Disposition — Civil	22	16	13	12	21	8	93	5
	From Issue to Trial (Civil Only)	36	37	33	24	27	-	81	4
	Number (and %) of Civil Cases Over 3 Years Old	116 (8.3)	134 (8.0)	66 (6.1)	38 (3.9)	29 (3.2)	41 (5.0)		
TRIALS	TOTAL	80	92	103	95	90	29		
	10 - 19 Days	8	7	1	11	4	-		
	20 Days and Over	-	-	1	-	-	1		
OTHER	Number of Defendants Filed	136	100	69	61	97	122		
	Number of Diversity Cases Filed	236	232	177	167	167	172		
MDL	Dockets	NA	-	-	-	-	-		
	Cases Pending	NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 1

Total filings rose 8.2 percent during calendar year 1981 to 463 per judgeship. Weighted filings per judgeship were even higher at 511, indicating a complex mix of cases. Terminations did not keep pace with filings and the pending caseload rose to 740 cases per judgeship. The two judges completed an average of 40 trials each in 1981; eight trials lasted more than ten days each.

In 1980 the Judicial Conference recommended one additional judgeship for this district on the basis of the workload, especially the weighted filings. With the additional judgeship the 1981 workload figures would be reduced to 309 filings, 341 weighted filings, and 493 pending cases per judgeship. The district and the Judicial Council did not request any judgeships over and above the one recommended by the Judicial Conference. The Subcommittee agrees that the one additional judgeship approved by the Judicial Conference in 1980 should be sufficient.

Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 0 **Total** 1

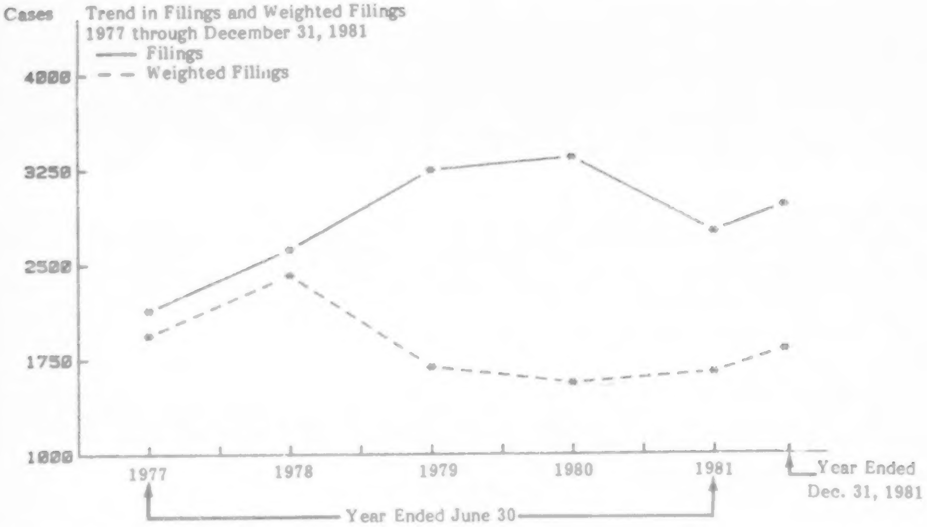
PUERTO RICO

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					[illegible]	Circuit
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		2,965	2,756	3,348	3,252	2,628	2,143		
	Terminations		2,916	2,849	3,313	3,122	2,654	1,923		
	Pending		1,855	2,010	2,102	2,067	1,937	1,963		
	Percent Change in Total Filings Current Year	Over June		7.6					41	2
		Over Earlier Years			-11.4	-8.8	12.8	38.4	44	3
	Number of Judgeships		7	7	7	7	3	3		
	Vacant Judgeship Months		24.0	26.3	43.2	30.8	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	424	394	478	465	876	714	49	2
		Civil	384	352	447	428	814	646	44	2
		Criminal	40	42	31	37	62	68	41	2
	Pending Cases		265	287	300	295	646	654	86	5
	Weighted Filings		260	235	223	234	807	647	83	5
	Terminations		417	407	473	446	885	641	35	2
	Trials Completed		18	18	18	15	36	50	91	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.5	2.1	2.8	2.6	2.8	4.2	3	1
		Civil	6	6	6	5	9	10	8	1
	From Issue to Trial (Civil Only)		10	11	14	10	10	8	12	1
	Number (and %) of Civil Cases Over 3 Years Old		80 (4.5)	84 (4.3)	69 (3.4)	60 (3.0)	57 (3.1)	136 (7.2)		
TRIALS	TOTAL		125	126	124	104	109	151		
	10 - 19 Days		1	1	2	4	1	2		
	20 Days and Over		1	1	1	1	1	-		
OTHER	Number of Defendants Filed		318	364	329	341	233	292		
	Number of Diversity Cases Filed		510	327	301	255	269	382		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 2

PUERTO RICO



ANALYSIS

Additional Judgeships Requested: By District NR **Recommended By Circuit Council** 0

There was a 7.6 percent increase in filings in this district in 1981, but the filing level is still below 1980's high of 3,348 cases. Filings per judgeship rose to 424; weighted filings were significantly lower at 260 per judgeship indicating a less complicated mix of cases than average. Terminations were high at 417 per judgeship and median times from filing to disposition of both civil and criminal cases were among the best in the nation.

The district and First Circuit Judicial Council did not request additional judgeships. Based on the current workload, the Subcommittee recommends no additional judgeships.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

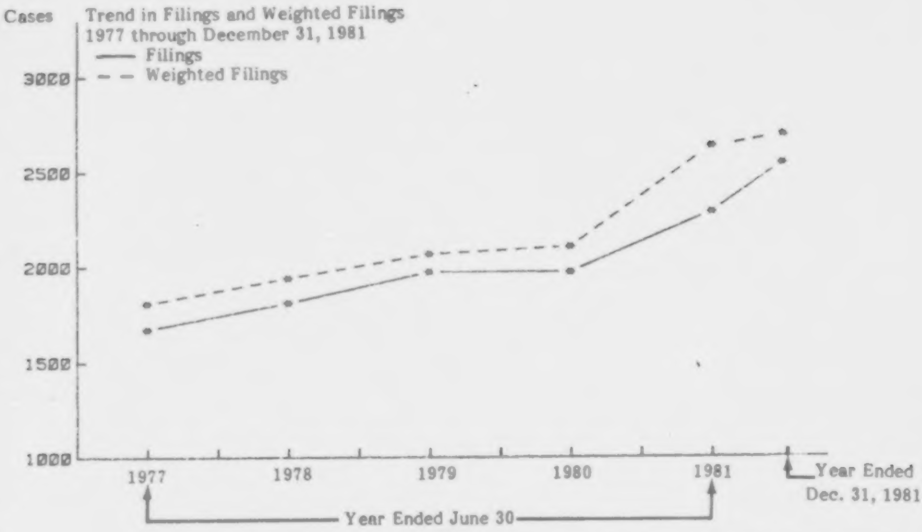
SECOND CIRCUIT
United States District Courts

CONNECTICUT

1982 BIENNIAL JUDGESHIP SURVE'
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings		2,556	2,332	1,978	1,980	1,830	1,684		
	Terminations		2,037	1,958	1,662	1,714	1,457	1,482		
	Pending		3,793	3,466	3,121	2,805	2,539	2,166		
	Percent Change in Total Filings Current Year	Over June ▶		11.0					26	2
		Over Earlier Years ▶			29.2	29.1	39.7	51.8	25	2
	Number of Judgeships		5	5	5	5	4	4		
	Vacant Judgeship Months		.0	.0	6.8	7.8	10.6	7.1		
ACTIONS PER JUDGESHIP	FILINGS	Total	511	460	396	396	458	421	19	1
		Civil	470	420	371	367	417	369	20	2
		Criminal	41	40	25	29	41	52	39	3
	Pending Cases		759	693	624	561	635	542	3	1
	Weighted Filings		537	527	421	428	486	452	7	1
	Terminations		407	392	332	343	364	371	38	1
	Trials Completed		42	44	44	43	44	57	39	3
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	5.5	6.0	5.3	4.9	3.9	6.3	90	4
		Civil	12	13	14	13	11	14	81	6
	From Issue to Trial (Civil Only)		25	33	23	31	18	27	77	5
	Number (and %) of Civil Cases Over 3 Years Old		506 (13.9)	516 (15.6)	455 (15.1)	363 (13.4)	315 (13.0)	220 (10.8)		
TRIALS	TOTAL		209	218	221	215	175	228		
	10 - 19 Days		10	7	8	3	4	5		
	20 Days and Over		6	7	5	1	2	-		
OTHER	Number of Defendants Filed		296	281	211	185	227	264		
	Number of Diversity Cases Filed		548	490	442	346	299	277		
MDL	Dockets		NA	2	1	1	1	-		
	Cases Pending		NA	19	9	15	15	-		

NA - This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 1

Filings rose 11 percent during calendar year 1981 to 511 per judgeship and weighted filings climbed to 537 per judgeship, ranking Connecticut seventh in the nation in weighted filings per judgeship. The number of trials completed per judgeship has remained stable over the last five years, but the number of long trials has increased in the last three years. In 1981 there were ten trials which lasted between 10 and 19 days and another six trials which lasted 20 days or more. Pending cases of 759 per judgeship are the third highest in the nation. A large percentage (13.9 percent) of these cases have been pending for more than three years.

The Judicial Conference in 1980 recommended a sixth judgeship for this district primarily on the basis of the weighted caseload. Redistributing the workload among six judgeships would reduce the per judgeship figures to 426 filings, 448 weighted filings, and 632 pending cases. The continuing high volume of the workload in this district supports the district's and Judicial Council's requests for another judgeship; therefore, the Subcommittee recommends the one additional judgeship previously approved by the Judicial Conference.

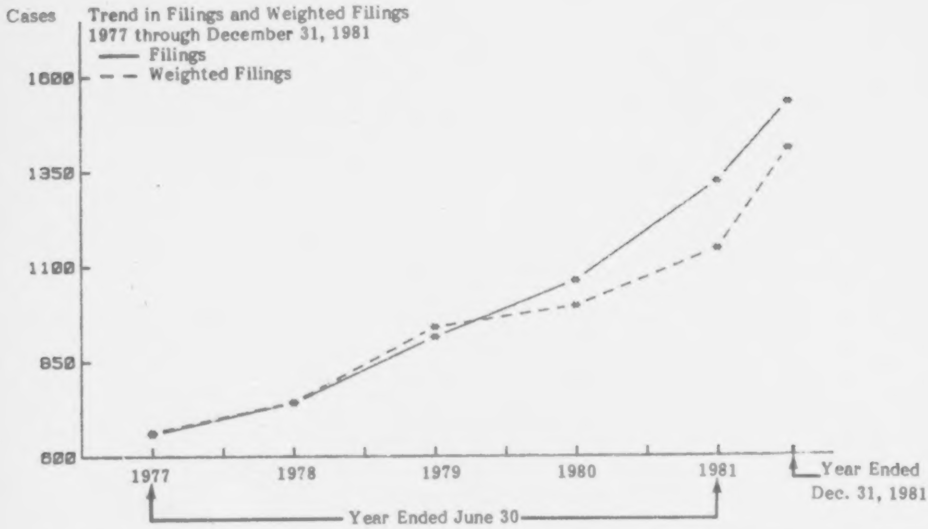
Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 0 **Total** 1

NEW YORK NORTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					[illegible]	[illegible]
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		1,532	1,324	1,067	926	742	667		
	Terminations		1,075	941	741	747	604	617		
	Pending		2,213	1,916	1,533	1,208	1,029	891		
	Percent Change in Total Filings Current Year		Over June ▶	15.7					16	1
			Over Earlier Years ▶		43.6	65.4	106.5	129.7	1	1
	Number of Judgeships		3	3	3	3	2	2		
	Vacant Judgeship Months		8.8	12.0	4.5	7.7	.0	4.2		
ACTIONS PER JUDGESHIP	FILINGS	Total	511	441	356	309	371	334	18	1
		Civil	482	408	329	271	310	267	15	1
		Criminal	29	33	27	38	61	67	70	5
	Pending Cases		738	639	511	403	515	446	5	2
	Weighted Filings		466	382	332	317	372	331	22	3
	Terminations		358	314	247	249	302	308	60	4
	Trials Completed		32	30	24	23	29	36	67	4
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.2	3.7	3.6	3.9	4.7	7.3	61	2
		Civil	11	12	13	12	16	14	72	4
	From Issue to Trial (Civil Only)		16	18	20	29	-	24	49	2
	Number (and %) of Civil Cases Over 3 Years Old		318 (15.0)	222 (12.2)	170 (11.7)	113 (10.1)	106 (11.4)	101 (12.9)		
TRIALS	TOTAL		96	90	71	68	58	72		
	10 - 19 Days		2	2	5	1	1	1		
	20 Days and Over		2	1	2	1	-	1		
OTHER	Number of Defendants Filed		127	157	107	171	144	190		
	Number of Diversity Cases Filed		201	197	147	113	112	82		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 1

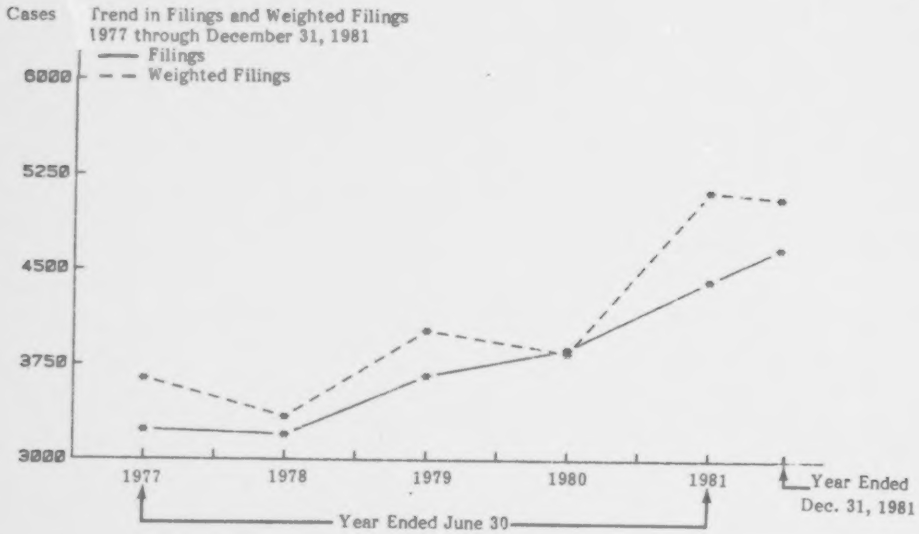
For the fifth consecutive year there was a substantial increase in case filings in this district, primarily in civil rights cases and state prisoner petitions. Total filings are now 511 per judgeship but weighted filings are lower at 466. One vacancy in 1981 was partially offset by help from visiting judges, but case filings far surpassed terminations. The district's pending caseload of 738 per judgeship now ranks 5th in the nation. The number of civil cases over three years old has grown 43 percent to 318 - 15 percent of this district's backlog.

The district has requested one additional judgeship based on the volume and growing complexity of case filings, and the amount of time which must be spent by the judges in traveling to the five places of holding court. The Second Circuit Judicial Council has approved the request. Calendar year 1981 workload figures redistributed among four judgeships would be 383 filings, 349 weighted filings and 553 pending cases. On the basis of this workload, the Subcommittee recommends one additional judgeship.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 1 **Total** 1

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
		December 31	June 30					U.S.	CIRCUIT
		1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings	4,705	4,446	3,904	3,697	3,229	3,260		
	Terminations	3,801	3,620	3,796	3,638	2,972	3,150		
	Pending	5,633	5,292	4,465	4,372	4,309	4,053		
	Percent Change in Total Filings Current Year: Over June ▶		5.8					49	3
	Over Earlier Years ▶			20.5	27.3	45.7	44.3	34	4
	Number of Judgeships	10	10	10	10	9	9		
	Vacant Judgeship Months	21.1	24.0	14.0	7.7	7.6	19.8		
ACTIONS PER JUDGESHIP	FILINGS: Total	471	445	390	370	359	362	28	3
	FILINGS: Civil	426	393	350	315	294	279	26	3
	FILINGS: Criminal	45	52	40	55	65	83	30	1
	Pending Cases	563	529	447	437	479	450	14	3
	Weighted Filings	507	513	385	406	371	405	13	2
	Terminations	380	352	380	364	330	350	51	3
	Trials Completed	45	47	47	47	49	50	31	2
MEDIAN TIMES (MONTHS)	From Filing to Disposition: Criminal	5.5	5.6	5.3	5.9	5.2	6.8	90	4
	From Filing to Disposition: Civil	8	8	9	10	11	10	42	2
	From Issue to Trial (Civil Only)	17	16	18	22	20	13	55	3
	Number (and %) of Civil Cases Over 3 Years Old	435 (8.6)	393 (8.4)	394 (10.2)	432 (11.4)	357 (9.8)	379 (11.3)		
TRIALS	TOTAL	447	470	468	470	443	453		
	10 - 19 Days	26	20	24	29	16	18		
	20 Days and Over	8	9	5	5	4	4		
OTHER	Number of Defendants Filed	847	944	746	871	1,014	1,161		
	Number of Diversity Cases Filed	1,035	1,036	794	720	690	681		
MDL	Dockets	NA	4	6	6	4	3		
	Cases Pending	NA	339	248	237	147	103		

NA – This information is compiled only for the year ended June 30.


Trend in Filings and Weighted Filings
1977 through December 31, 1981

ANALYSIS

Additional Judgeships Requested: By District 2 **Recommended By Circuit Council** 2

Case filings rose 5.8 percent to 471 cases per judgeship in 1981; weighted filings were higher at 507 per judgeship. Much of this increase can be traced to "Agent Orange" cases involving Dow Chemical Corporation transferred into this district by the Judicial Panel on Multidistrict Litigation and assigned to a judge in the Eastern District. These personal injury product liability cases are weighted heavier than the average case.

The district's complex caseload is reflected in the number of long trials reported each year. In 1981 there were 34 trials which lasted ten days or more. The district has a heavy criminal caseload, with 45 criminal filings for each judgeship in 1981 with nearly two defendants per case.

In 1980 the Judicial Conference recommended one additional judgeship for New York, Eastern on the basis of many prolonged trials and a high weighted caseload. With 11 judgeships the district's workload figures would become 427 filings, 461 weighted filings and 512 pending cases per judgeship.

The district has requested another judgeship over and above the one recommended by the Judicial Conference in 1980 and the Second Circuit Judicial Council has approved that request. With 12 judgeships the per judgeship figures would drop to 392 filings, 423 weighted filings and 469 pending cases.

Based on the weighted filings and lengthy trials, the Subcommittee recommends that 2 additional judgeships (including the one recommended by the Judicial Conference in 1980) be authorized for the Eastern District of New York.

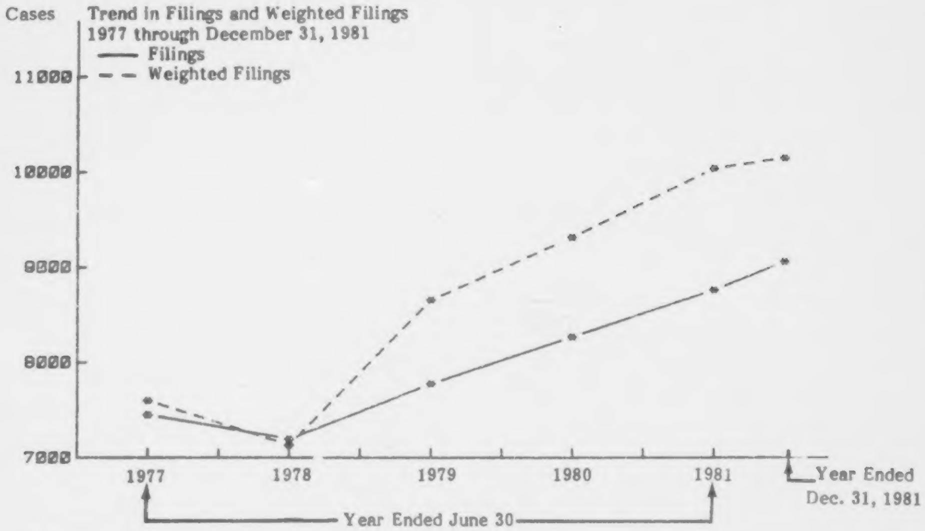
Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 1 **Total** 2

NEW YORK SOUTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings		9,085	8,789	8,307	7,840	7,275	7,510		
	Terminations		8,797	8,672	7,937	7,752	7,591	8,030		
	Pending		9,607	9,078	8,960	8,601	8,506	8,823		
	Percent Change in Total Filings Current Year	Over June ▶		3.4					60	5
		Over Earlier Years ▶			9.4	15.9	24.9	21.0	64	6
	Number of Judgeships		27	27	27	27	27	27		
	Vacant Judgeship Months		11.2	12.0	12.0	12.7	31.0	14.8		
ACTIONS PER JUDGESHIP	FILINGS	Total	336	326	308	290	269	278	76	5
		Civil	311	296	279	255	234	235	74	5
		Criminal	25	30	29	35	35	43	81	6
	Pending Cases		356	336	332	319	315	327	61	5
	Weighted Filings		375	372	345	324	264	282	54	5
	Terminations		326	321	294	287	281	297	72	5
	Trials Completed		30	33	31	36	35	35	70	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.1	4.1	4.2	4.1	4.2	5.1	57	1
		Civil	9	9	9	10	11	12	60	3
	From Issue to Trial (Civil Only)		12	13	13	14	13	17	23	1
	Number (and %) of Civil Cases Over 3 Years Old		583 (6.5)	597 (7.0)	774 (9.3)	696 (8.7)	711 (9.0)	724 (8.9)		
TRIALS	TOTAL		809	882	833	965	945	948		
	10 - 19 Days		41	40	47	27	31	38		
	20 Days and Over		13	17	20	15	14	14		
OTHER	Number of Defendants Filed		1,084	1,159	1,101	1,417	1,223	1,834		
	Number of Diversity Cases Filed		2,183	2,133	2,059	1,858	1,753	1,830		
MDL	Dockets		NA	11	11	14	17	13		
	Cases Pending		NA	161	130	149	267	111		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

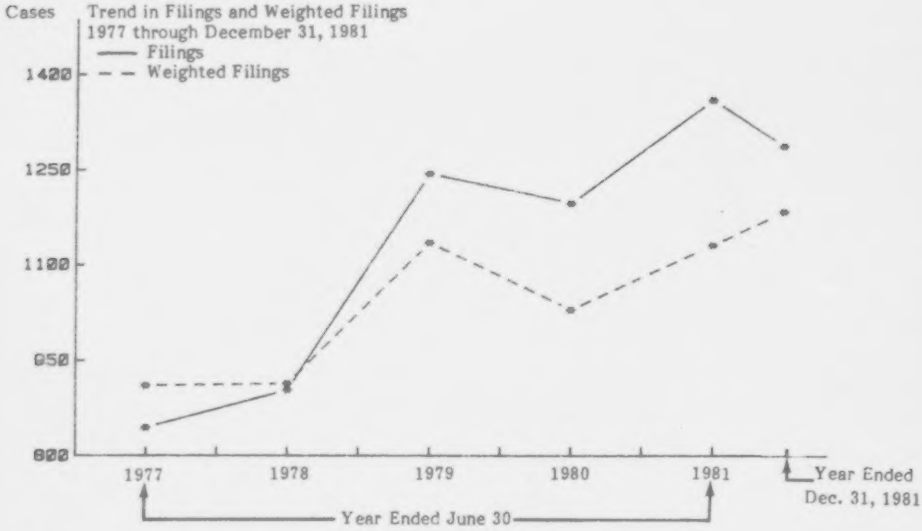
Cases filed during calendar year 1981 increased slightly over the year ended June 30, 1981 to 336 per judgeship with weighted filings higher at 375. This district consistently has a large number of protracted trials. In 1981 there were 54 trials lasting ten days or more, 13 of which lasted 20 days or more. The pending caseload of 356 per judgeship ranks 61st nationwide. The district and Judicial Council have requested no additional judgeships and, based on current workload levels, the Subcommittee recommends none.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

NEW YORK WESTERN

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings	1,295	1,357	1,207	1,256	915	864		
	Terminations	1,151	1,212	1,228	1,144	1,024	918		
	Pending	1,690	1,514	1,359	1,380	1,267	1,376		
	Percent Change in Total Filings Current Year	Over June ▶	-5.3					86	6
		Over Earlier Years ▶		7.3	3.1	41.5	49.9	29	3
	Number of Judgeships	3	3	3	3	3	3		
	Vacant Judgeship Months	6.5	.5	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS Total	432	456	402	419	305	288	43	4
	FILINGS Civil	388	411	356	357	255	226	43	4
	FILINGS Criminal	44	45	46	62	50	62	31	2
	Pending Cases	563	535	453	460	422	459	14	3
	Weighted Filings	385	377	343	387	305	304	46	4
	Terminations	384	404	409	381	341	306	49	2
	Trials Completed	46	48	54	39	46	48	28	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition Criminal	6.2	6.8	6.2	5.7	8.2	19.0	93	6
	From Filing to Disposition Civil	7	7	8	10	15	10	24	1
	From Issue to Trial (Civil Only)	-	17	23	20	24	17	-	-
	Number (and %) of Civil Cases Over 3 Years Old	197 (12.3)	183 (12.8)	164 (13.1)	156 (12.5)	220 (19.6)	235 (20.3)		
TRIALS	TOTAL	138	143	162	113	139	145		
	10 - 19 Days	4	6	5	6	4	3		
	20 Days and Over	-	3	2	2	2	1		
OTHER	Number of Defendants Filed	187	196	204	305	179	263		
	Number of Diversity Cases Filed	122	131	106	118	108	100		
MDL	Dockets	NA	-	-	-	-	-		
	Cases Pending	NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1T **Recommended By Circuit Council** 1T

After a 13 percent increase in the year ended June 30, 1981, total filings fell 5.3 percent in calendar year 1981 resulting in 432 filings per judgeship. Weighted filings were substantially lower at 385 per judgeship indicating a less complex mix of cases than average. Much of the caseload is made up of cases involving the U. S. government's efforts to recover defaulted student loans, and prisoner petitions - all of which require less involvement by judges than the average case. This district, however, reports several protracted trials each year. Such trials leave the 3 active judges little time for reducing the backlog which grew to 563 cases per judgeship in 1981.

The district has requested only the one five-year temporary judgeship approved by the Judicial Conference in 1980. The fourth judgeship would result in 324 filings, 289 weighted filings and 423 pending cases per judgeship. On the basis of the current workload and the recommendation by the Second Circuit Judicial Council, the Subcommittee recommends only the one temporary position approved by the Judicial Conference in 1980.

Additional Judgeships Recommended:
By Judicial Conference in 1980 1T **By Subcommittee in 1982** 0 **Total** 1T

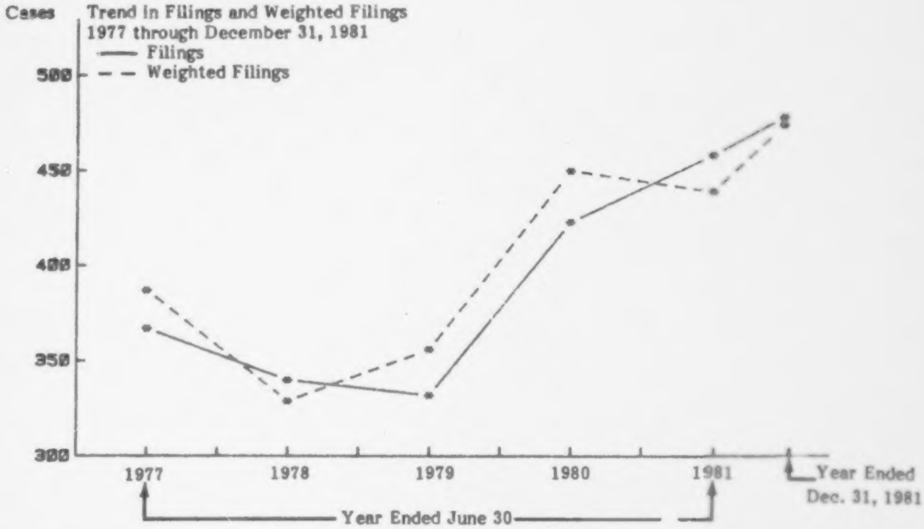
VERMONT

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings		481	451	425	334	341	371		
	Terminations		435	418	315	330	385	362		
	Pending		540	515	472	365	361	405		
	Percent Change in Total Filings Current Year	Over June ▶		4.3					53	4
		Over Earlier Years ▶			13.2	44.0	41.1	29.6	53	5
	Number of Judgeships		2	2	2	2	2	2		
	Vacant Judgeship Months		.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	241	231	213	167	171	186	91	6
		Civil	204	197	193	146	143	145	89	6
		Criminal	37	34	20	21	28	41	52	4
	Pending Cases		270	258	236	183	181	203	82	6
	Weighted Filings		236	219	225	186	165	194	87	6
	Terminations		218	209	158	165	193	181	90	6
	Trials Completed		30	29	28	33	35	40	70	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.4	4.4	4.6	3.9	2.9	5.7	66	3
		Civil	11	9	10	10	12	11	72	4
	From Issue to Trial (Civil Only)		18	21	-	13	14	13	69	4
	Number (and %) of Civil Cases Over 3 Years Old		9 (2.0)	5 (1.2)	5 (1.3)	2 (.7)	3 (1.0)	2 (.6)		
TRIALS	TOTAL		60	58	56	65	69	80		
	10 - 19 Days		-	-	3	3	-	1		
	20 Days and Over		3	1	-	-	1	-		
OTHER	Number of Defendants Filed		112	94	59	76	66	109		
	Number of Diversity Cases Filed		140	139	131	85	95	121		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.

VERMONT



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Although case filings rose for the third year in a row, 4.3 percent over the year ended June 30, 1981, the 241 filings and 236 weighted filings per judgeship are among the lowest in the country. Pending cases of 270 per judgeship ranks 82nd among the 95 district courts. The district and Judicial Council have requested no additional judgeships and the Subcommittee agrees that two judgeships are sufficient to handle the district's workload. The Subcommittee, therefore, recommends no additional judgeships.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

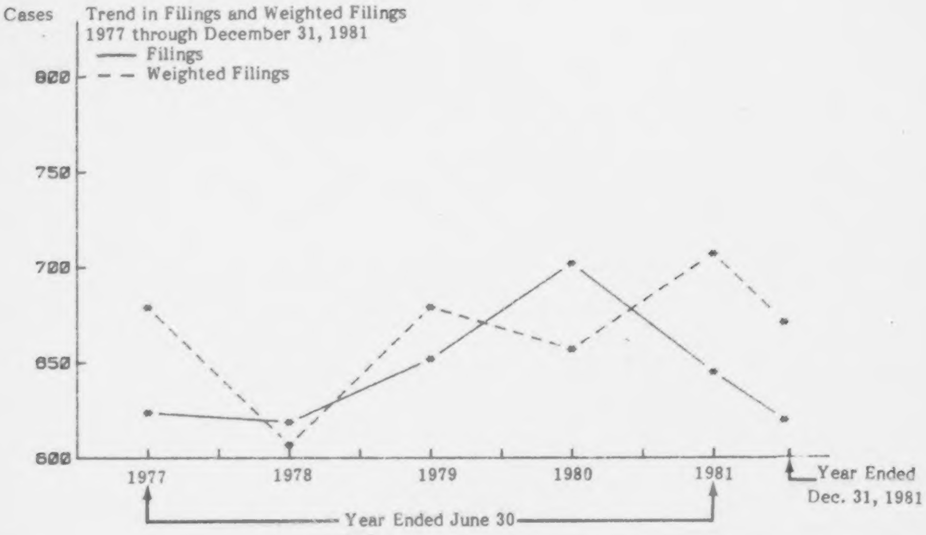
THIRD CIRCUIT
United States District Courts

DELAWARE

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings		622	645	706	659	623	629		
	Terminations		565	583	742	619	581	614		
	Pending		663	627	565	601	561	519		
	Percent Change in Total Filings Current Year	Over June ▶		-3.6					83	4
		Over Earlier Years ▶			-11.9	-5.6	-.2	-1.1	85	5
	Number of Judgeships		3	3	3	3	3	3		
	Vacant Judgeship Months		.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	207	215	235	220	208	210	92	6
		Civil	196	201	218	202	189	165	91	6
		Criminal	11	14	17	18	19	45	94	6
	Pending Cases		221	209	188	200	187	173	89	5
	Weighted Filings		217	236	219	229	202	226	90	5
	Terminations		188	194	247	206	194	205	92	6
	Trials Completed		28	28	30	25	16	21	78	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.1	3.9	3.5	3.5	3.7	3.7	57	2
		Civil	8	7	5	9	8	13	42	3
	From Issue to Trial (Civil Only)		12	11	13	19	-	-	23	2
	Number (and %) of Civil Cases Over 3 Years Old		65 (10.2)	47 (7.8)	55 (10.1)	60 (10.3)	53 (9.9)	36 (7.5)		
TRIALS	TOTAL		85	83	89	76	49	64		
	10 - 19 Days		5	3	1	1	1	4		
	20 Days and Over		1	1	4	-	2	1		
OTHER	Number of Defendants Filed		39	57	72	67	68	156		
	Number of Diversity Cases Filed		116	138	104	127	103	91		
MDL	Dockets		NA	1	1	-	1	1		
	Cases Pending		NA	3	3	-	3	3		

NA — This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

The per judgeship workload figures for this district are among the lowest in the country. In calendar year 1981 filings were 207 per judgeship, weighted filings were 217, and the pending caseload stood at 221. These figures rank 92nd, 90th, and 89th among all U. S. district courts. Neither the district nor the Judicial Council have requested or recommended additional judgeships for this district and the Subcommittee agrees that no additional judgeships are required.

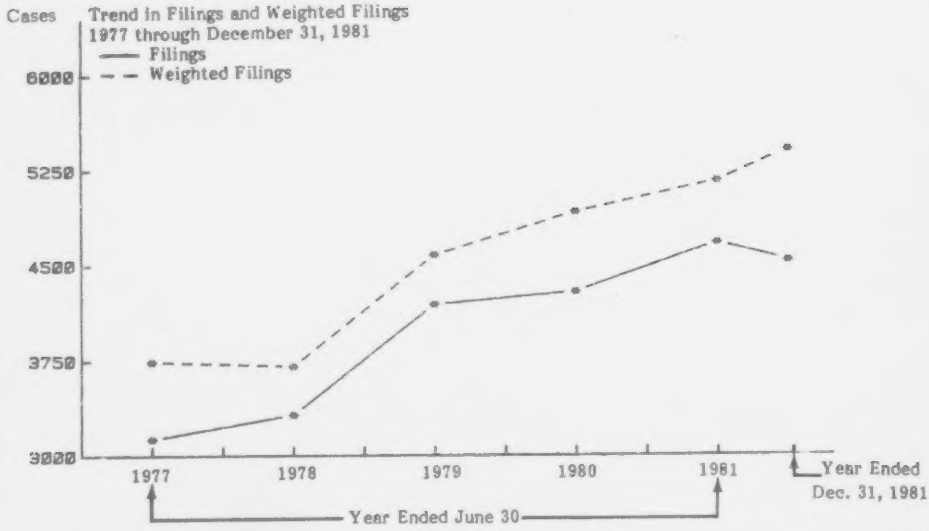
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

NEW JERSEY

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		4,549	4,699	4,308	4,214	3,373	3,166		
	Terminations		4,523	4,729	4,100	4,143	3,483	3,330		
	Pending		3,465	3,380	3,420	3,224	3,154	3,263		
	Percent Change in Total Filings Current Year	Over June ▶		-3.0					82	3
		Over Earlier Years ▶			5.6	7.9	34.9	43.7	36	1
	Number of Judgeships		11	11	11	11	9	9		
	Vacant Judgeship Months		.0	.0	20.3	29.3	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	414	426	392	383	375	352	52	2
		Civil	381	392	356	344	327	286	47	1
		Criminal	33	34	36	39	48	66	60	3
	Pending Cases		315	307	311	293	350	363	69	2
	Weighted Filings		491	469	447	420	412	416	15	1
	Terminations		411	430	373	377	387	370	36	2
	Trials Completed		39	45	40	38	44	52	49	2
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.4	4.1	4.7	3.6	4.4	5.7	66	4
		Civil	7	6	7	7	10	11	24	2
	From Issue to Trial (Civil Only)		15	14	17	14	15	16	42	5
	Number (and %) of Civil Cases Over 3 Years Old		124 (3.7)	123 (3.9)	134 (4.2)	181 (6.0)	167 (5.6)	186 (6.4)		
TRIALS	TOTAL		426	490	437	415	396	470		
	10 - 19 Days		20	15	29	16	12	18		
	20 Days and Over		10	9	7	3	5	4		
OTHER	Number of Defendants Filed		522	544	587	639	474	901		
	Number of Diversity Cases Filed		1,392	1,305	1,168	1,080	1,019	823		
MDL	Dockets		NA	4	3	1	2	2		
	Cases Pending		NA	43	34	2	2	8		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 3 **Recommended By Circuit Council** 3

During calendar year 1981 filings in this district were 3.0 percent below the number of cases filed during the year ended June 30, 1981. Per judgeship filings dropped from 426 to 414; however, weighted filings rose from 469 to 491 per judgeship during that same period. This substantial rise occurred as a result of increased case filings involving civil rights and asbestos related personal injury cases.

This district consistently has a large number of lengthy trials. In calendar year 1981, there were 30 trials which required more than ten days with ten trials running for more than 20 days.

In 1980, the Judicial Conference recommended two additional judgeships for this district because of the weighted caseload and number of long trials. With 13 judgeships total filings would fall to 350 per judgeship, but weighted filings would only drop to 415. Both the District of New Jersey and the Third Circuit Judicial Council have requested that one additional judgeship be added to this recommendation. With 14 authorized judgeships, the calendar year per judgeship statistics would be as follows: filings - 325; and weighted filings - 386. With this level of weighted filings and the substantial number of long trials, there is sufficient justification for the third additional judgeship. Therefore, the Subcommittee recommends three additional judgeships (including the two previously recommended by the Judicial Conference in 1980).

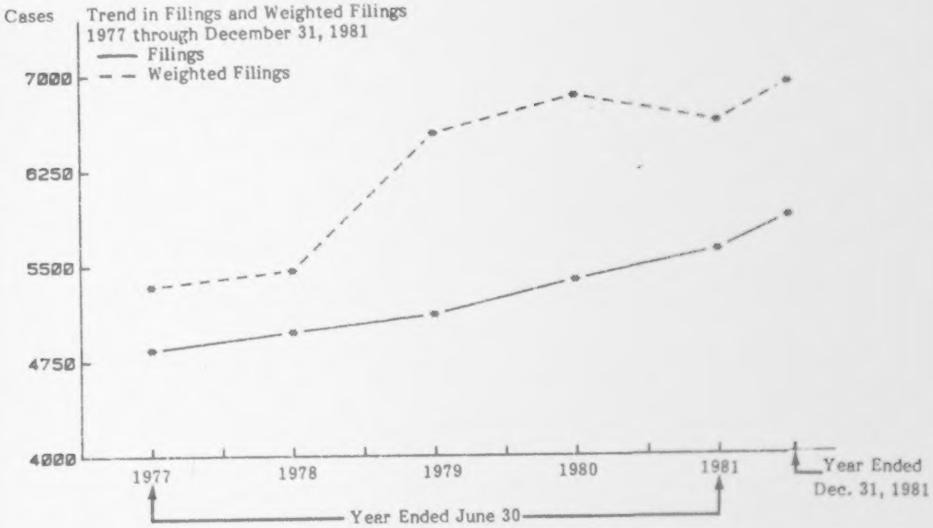
Additional Judgeships Recommended:
By Judicial Conference in 1980 2 **By Subcommittee in 1982** 1 **Total** 3

PENNSYLVANIA EASTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings		5,885	5,627	5,398	5,137	5,024	4,875		
	Terminations		5,717	5,417	5,143	5,086	4,595	4,603		
	Pending		5,350	5,247	5,037	4,789	4,737	4,406		
	Percent Change in Total Filings Current Year	Over June ▶		4.6					52	2
		Over Earlier Years ▶			9.0	14.6	17.1	20.7	65	3
Number of Judgeships			19	19	19	19	19	19		
Vacant Judgeship Months			.0	.0	6.2	17.1	16.9	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	310	296	284	270	264	256	82	4
		Civil	292	279	269	252	239	227	78	4
		Criminal	18	17	15	18	25	29	91	5
	Pending Cases		282	276	265	252	249	232	80	3
	Weighted Filings		365	349	360	348	288	281	57	2
	Terminations		301	285	271	268	247	242	81	4
	Trials Completed		39	36	36	32	38	35	49	2
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.5	4.6	4.1	4.0	3.8	3.6	75	5
		Civil	8	8	8	9	9	9	42	3
	From Issue to Trial (Civil Only)		14	13	13	12	14	15	36	4
	Number (and %) of Civil Cases Over 3 Years Old		258 (5.0)	230 (5.6)	270 (5.5)	199 (4.3)	143 (3.2)	197 (4.7)		
TRIALS	TOTAL		746	685	678	617	720	658		
	10 - 19 Days		28	29	26	21	28	35		
	20 Days and Over		10	11	10	5	7	6		
OTHER	Number of Defendants Filed		562	522	521	638	652	916		
	Number of Diversity Cases Filed		2,291	2,230	2,218	2,008	1,870	1,856		
MDL	Dockets		NA	7	8	10	8	7		
	Cases Pending		NA	71	104	163	107	123		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Filings in this district during calendar year 1981 were 4.6 percent above the number of filings recorded during the year ended June 30, 1981. This increase resulted in 310 filings per authorized judgeship which was 82nd among the 95 district courts. Weighted filings, on the other hand, were much higher at 365 per judgeship or 57th among all district courts. The pending caseload on December 31, 1981 was slightly higher than the backlog reported on June 30, 1981, but was still only 282 for each of the authorized judgeships. Neither the district nor the Judicial Council have requested or recommended additional judgeships for this district. The Subcommittee agrees that no additional judgeships are required.

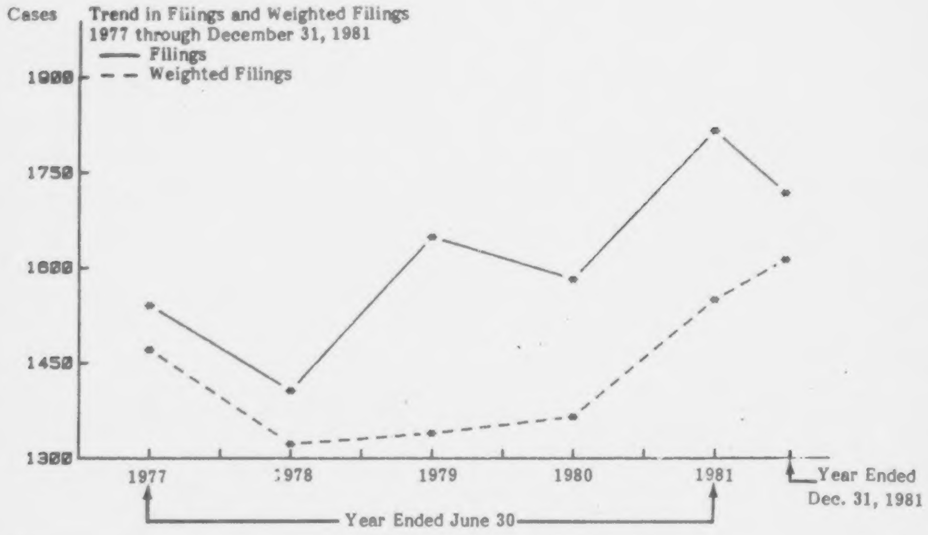
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

PENNSYLVANIA MIDDLE

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		1,725	1,822	1,587	1,654	1,417	1,551		
	Terminations		1,569	1,542	1,692	1,645	1,589	1,621		
	Pending		1,332	1,294	1,004	1,110	1,101	1,273		
	Percent Change in Total Filings Current Year	Over June ▶		-5.3					86	6
		Over Earlier Years ▶			8.7	4.3	21.7	11.2	81	4
	Number of Judgeships		5	5	5	5	3	3		
	Vacant Judgeship Months		3.2	.0	2.5	15.4	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	345	364	317	331	472	517	74	3
		Civil	306	332	297	311	443	463	75	3
		Criminal	39	32	20	20	29	54	44	2
	Pending Cases		265	257	201	222	367	424	84	4
	Weighted Filings		322	310	273	271	441	490	73	3
	Terminations		314	308	338	329	530	540	77	3
	Trials Completed		27	35	26	26	42	49	82	6
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.1	4.2	3.2	2.9	3.1	3.7	57	2
		Civil	8	7	6	8	11	12	42	3
	From Issue to Trial (Civil Only)		9	9	6	7	8	8	9	1
	Number (and %) of Civil Cases Over 3 Years Old		21 (1.8)	20 (1.7)	21 (2.3)	21 (2.0)	23 (2.2)	13 (1.1)		
TRIALS	TOTAL		135	169	132	132	125	146		
	10 - 19 Days		4	5	4	5	7	3		
	20 Days and Over		2	3	3	-	1	-		
OTHER	Number of Defendants Filed		256	218	161	115	94	216		
	Number of Diversity Cases Filed		373	370	316	308	289	295		
MDL	Dockets		NA	-	-	1	1	-		
	Cases Pending		NA	-	-	5	10	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

During calendar year 1981, filings in this district were 5.3 percent below the number of cases filed during the year ended June 30, 1981. This drop from the record high of 1,822 filings during the year ended June 30, 1981, resulted in 345 filings per authorized judgeship with weighted filings slightly lower at 322. While the pending caseload in this district has increased substantially since 1980, at 266 per authorized judgeship, it still ranks only 84th among the 95 district courts. Neither the district nor the Judicial Council have requested that additional judgeships be created for this district and the Subcommittee agrees that no additional judgeships are required.

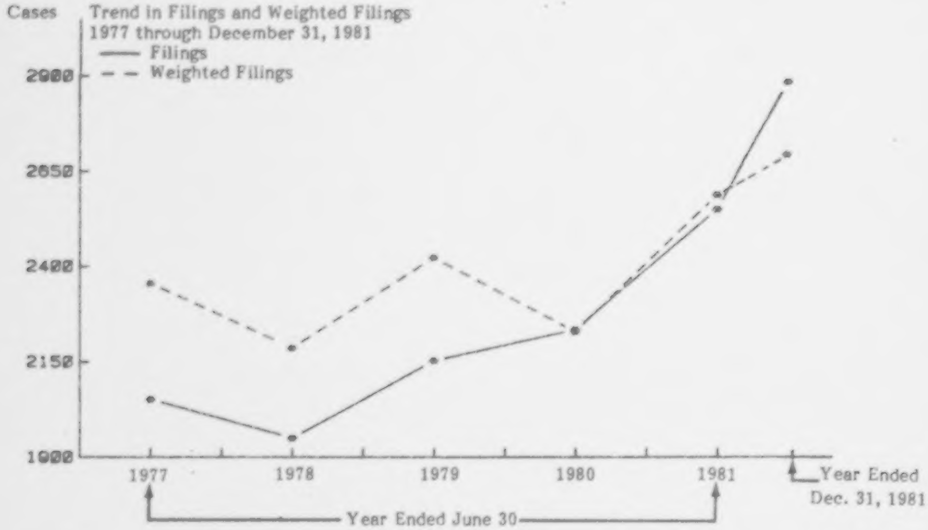
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

PENNSYLVANIA WESTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings		2,887	2,552	2,243	2,164	1,959	2,068		
	Terminations		2,696	2,378	2,336	2,466	1,886	1,961		
	Pending		2,010	1,894	1,708	1,808	2,107	2,033		
	Percent Change in Total Filings Current Year	Over June ▶		13.1					20	1
		Over Earlier Years ▶			28.7	33.4	47.4	39.6	42	2
	Number of Judgeships		10	10	10	10	10	10		
	Vacant Judgeship Months		16.0	12.0	6.5	12.0	43.6	29.3		
ACTIONS PER JUDGESHIP	FILINGS	Total	289	255	224	216	196	207	85	5
		Civil	270	239	205	191	164	177	82	5
		Criminal	19	16	19	25	32	30	89	4
	Pending Cases		201	188	171	181	211	203	91	6
	Weighted Filings		267	259	223	245	219	236	82	4
	Terminations		270	238	234	247	189	196	85	5
	Trials Completed		30	33	36	38	35	37	70	4
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.5	5.8	4.2	5.3	4.7	6.6	76	5
		Civil	5	6	7	10	10	8	4	1
	From Issue to Trial (Civil Only)		12	12	13	16	15	12	23	2
	Number (and %) of Civil Cases Over 3 Years Old		99 (5.2)	115 (6.4)	125 (7.8)	146 (8.7)	220 (11.6)	159 (8.5)		
TRIALS	TOTAL		302	330	360	378	351	372		
	10 - 19 Days		5	10	10	6	11	9		
	20 Days and Over		2	3	1	2	3	7		
OTHER	Number of Defendants Filed		301	243	294	372	465	535		
	Number of Diversity Cases Filed		694	659	613	524	465	510		
MDL	Dockets		NA	2	2	2	2	2		
	Cases Pending		NA	57	55	50	55	57		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 Recommended By Circuit Council 0

During calendar year 1981, filings were a substantial 13.1 percent higher than the number of cases filed during the year ended June 30, 1981. This increase resulted in 289 filings per authorized judgeship with weighted filings slightly lower at 267. These workload figures rank 85th and 82nd among all 95 district courts. The pending caseload in this district has increased substantially over the last two years, but at 201 per authorized judgeship, remained among the lowest nationwide. Neither the district nor the Judicial Council have requested that additional judgeships be created in this district and the Subcommittee agrees that no additional judgeships are required.

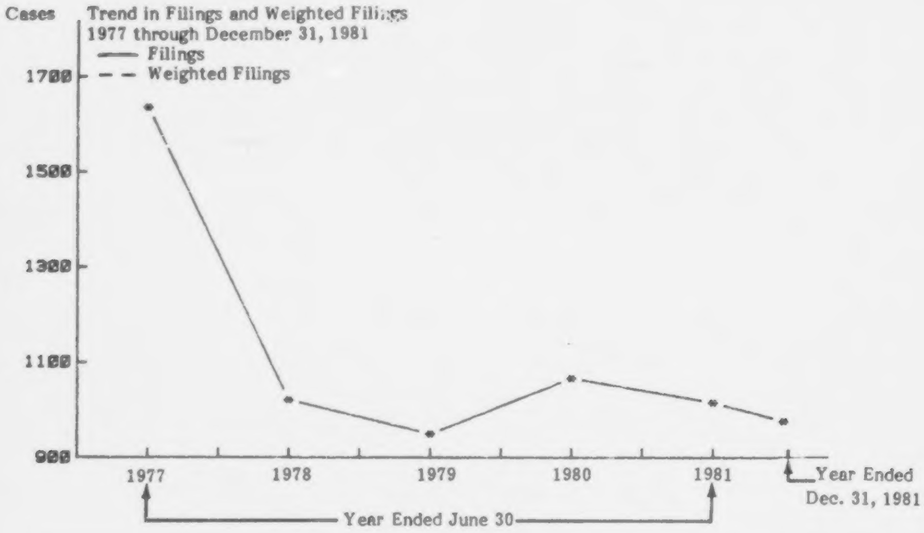
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

VIRGIN ISLANDS

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING	
			December 31	June 30					WITHIN U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		980	1,017	1,068	952	1,021	1,636		
	Terminations		845	906	884	1,110	1,064	2,406		
	Pending		1,467	1,433	1,322	1,138	1,296	1,339		
	Percent Change in Total Filings Current Year	Over June ▶		-3.6					93	4
		Over Earlier Years ▶			-8.2	2.9	-4.0	-40.1	90	6
	Number of Judgeships		2	2	2	2	2	2		
	Vacant Judgeship Months		11.0	12.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	490	509	534	476	511	818	23	1
		Civil	372	395	368	320	317	619	51	2
		Criminal	118	124	166	156	194	199	2	1
	Pending Cases		734	717	661	569	648	670	6	1
	Weighted Filings		-	-	-	-	-	-	-	-
	Terminations		423	453	442	555	532	1,203	32	1
	Trials Completed		50	48	48	78	75	72	21	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.4	3.5	3.0	3.7	2.9	4.1	27	1
		Civil	17	13	15	15	17	11	89	6
	From Issue to Trial (Civil Only)		23	22	11	12	16	17	75	6
	Number (and %) of Civil Cases Over 3 Years Old		131 (10.0)	135 (10.6)	102 (8.8)	141 (14.3)	103 (9.3)	127 (10.5)		
TRIALS	TOTAL		99	96	95	156	149	143		
	10 - 19 Days		-	-	-	-	-	-		
	20 Days and Over		-	-	-	-	-	-		
OTHER	Number of Defendants Filed		292	297	421	401	496	485		
	Number of Diversity Cases Filed		-	-	-	-	-	-		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District NR **Recommended By Circuit Council** 0

During calendar year 1981, the number of cases filed per authorized judgeship fell to 490 compared to 509 during the year ended June 30, 1981. This was a drop of nearly 4 percent in the number of cases filed. More than 90 percent of the civil cases filed in this district involve local jurisdiction matters. In calendar year 1981, of the 743 civil cases filed, 671 involved local issues. The number of case filings in this district has remained at approximately the same level since 1978. The pending caseload, however, continues to grow. A contributing factor in the growing pending caseload is the fact that only one of the two judgeships in this district has been filled over the last year and a half. Now that the second position is filled, the district should be able to make some progress in controlling the growth in backlog. The district and the Judicial Council have not requested additional judgeships for this district and the Subcommittee agrees that no additional judgeships are required.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

FOURTH CIRCUIT
United States District Courts

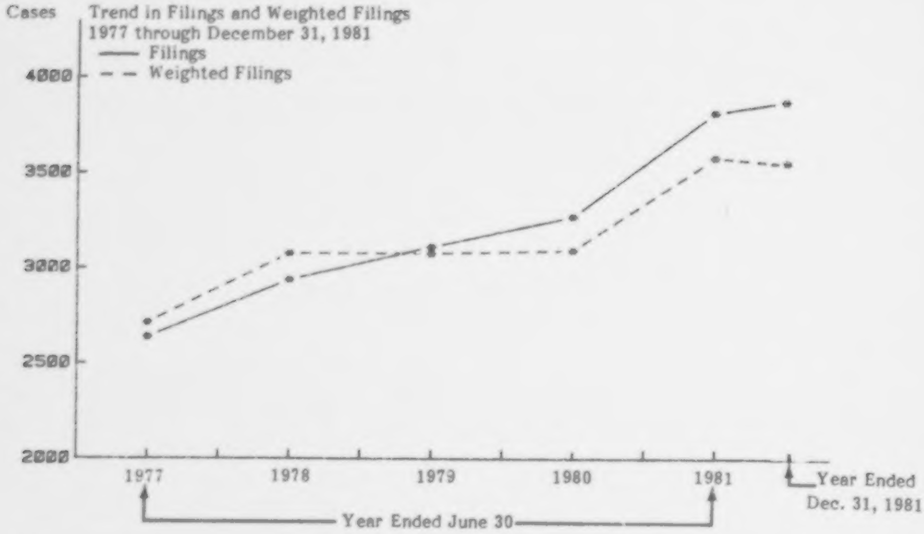
MARYLAND

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		3,889	3,825	3,284	3,134	2,957	2,654		
	Terminations		3,686	3,439	2,979	2,896	2,818	2,525		
	Pending		3,417	3,359	2,972	2,680	2,440	2,302		
	Percent Change in Total Filings Current Year		Over June ▶	1.7					72	8
			Over Earlier Years ▶		18.4	24.1	31.5	46.5	30	3
	Number of Judgeships		9	9	9	9	7	7		
	Vacant Judgeship Months		6.6	4.5	10.0	15.4	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	432	425	365	348	422	379	43	5
		Civil	380	380	326	299	337	297	48	5
		Criminal	52	45	39	49	85	82	22	2
	Pending Cases		380	373	330	298	349	329	53	6
	Weighted Filings		395	398	344	342	440	387	41	2
	Terminations		410	382	331	322	403	361	37	6
	Trials Completed		35	37	34	37	42	45	60	7
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.7	4.8	5.0	4.6	4.2	4.6	82	9
		Civil	8	7	7	7	8	8	42	4
	From Issue to Trial (Civil Only)		10	11	12	12	13	12	12	3
	Number (and %) of Civil Cases Over 3 Years Old		160 (5.1)	145 (4.7)	156 (5.8)	139 (5.9)	140 (6.6)	109 (5.6)		
TRIALS	TOTAL		316	335	304	336	297	313		
	10 - 19 Days		15	16	18	10	7	8		
	20 Days and Over		-	1	4	4	3	3		
OTHER	Number of Defendants Filed		731	626	527	660	750	773		
	Number of Diversity Cases Filed		706	759	634	473	458	411		
MDL	Dockets		NA	2	1	2	2	1		
	Cases Pending		NA	43	7	36	36	5		

NA – This information is compiled only for the year ended June 30.

MARYLAND



ANALYSIS

Additional Judgeships Requested: By District 1 **, Recommended By Circuit Council** 1

During calendar year 1981, total filings in this district rose by only 1.7 percent. This resulted in 432 filings per judgeship and 395 weighted filings per judgeship. The district consistently has many long trials each year and 1981 was no exception. There were 15 trials in 1981 that lasted over 10 days. The district's criminal workload of 52 filings per judgeship consists of many multidefendant cases involving robbery, fraud and drug-related offenses.

Although the levels of the raw and weighted workload alone are not so critical as to justify the district's request for an additional permanent judgeship position, the number of long trials in conjunction with the workload, argue for a recommendation for an additional judgeship. With 10 judgeships the 1981 workload figures become 389 filings, 356 weighted filings, and 342 pending cases per judgeship.

The Fourth Circuit Judicial Council has approved the district's request, and the Subcommittee recommends one additional judgeship.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 1 **Total** 1

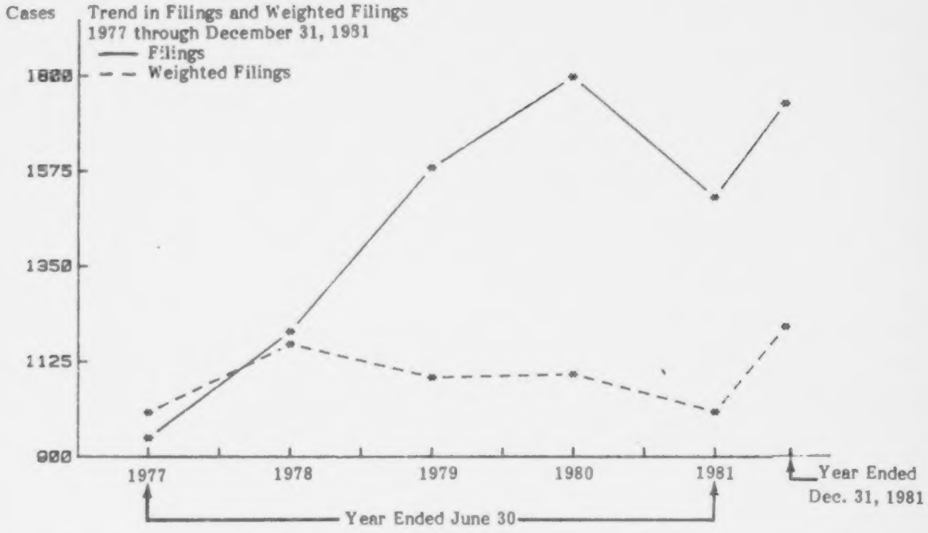
NORTH CAROLINA EASTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING	
			December 31	June 30					WITHIN U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		1,738	1,517	1,796	1,607	1,211	960		
	Terminations		1,791	1,791	1,613	1,291	1,173	736		
	Pending		1,295	1,133	1,457	1,277	961	923		
	Percent Change in Total Filings Current Year	Over June ▶		14.6					17	2
		Over Earlier Years ▶			-3.2	8.2	43.5	81.0	7	1
	Number of Judgeships		3	3	3	3	2	2		
	Vacant Judgeship Months		12.0	12.0	23.1	8.4	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	579	506	599	536	606	480	4	1
		Civil	532	457	540	467	491	346	6	2
		Criminal	47	39	59	69	115	134	28	4
	Pending Cases		432	374	486	426	481	462	38	2
	Weighted Filings		383	336	365	363	583	504	50	4
	Terminations		597	597	538	430	587	368	2	1
	Trials Completed		40	41	16	16	21	29	46	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.7	4.7	4.3	3.6	2.6	2.9	40	6
		Civil	8	7	4	4	10	10	42	4
	From Issue to Trial (Civil Only)		18	22	-	-	-	14	60	6
	Number (and %) of Civil Cases Over 3 Years Old		43 (3.7)	66 (6.4)	99 (7.8)	92 (8.7)	73 (9.5)	64 (7.9)		
TRIALS	TOTAL		121	121	49	48	41	57		
	10 - 19 Days		3	4	1	-	-	-		
	20 Days and Over		-	-	1	-	-	-		
OTHER	Number of Defendants Filed		232	180	294	271	335	371		
	Number of Diversity Cases Filed		108	93	103	106	110	111		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.

NORTH CAROLINA EASTERN



Trend in Filings and Weighted Filings
1977 through December 31, 1981

ANALYSIS

Additional Judgeships Requested: By District 1T **Recommended By Circuit Council** 1

During calendar year 1981, total filings in this district increased 14.6 percent. Filings per judgeship numbered 579, but weighted filings per judgeship were much lower at 383 due primarily to the large numbers of low weighted student loan cases and prisoner petitions. With a less complex mix of cases than average and the help of visiting judges, this court managed 597 terminations per judgeship during 1981, the second highest in the nation. Despite this record the backlog of pending cases grew from 394 to 432 per judgeship in 1981.

In 1980, the Judicial Conference recommended a five-year temporary judgeship position to relieve the district's heavy criminal and pending caseload. The criminal workload has declined since then; and although the buildup of the pending caseload too has slowed through the help of visiting judges, many of the pending cases awaiting trial are expected to occupy significant judge time. The Fourth Circuit Judicial Council has requested one permanent, rather than one temporary, judgeship position. With one additional judgeship the 1981 raw filings are reduced to 435, weighted filings drop to 287, and the pending caseload becomes 324 per judgeship. Although the Subcommittee agrees that workload levels of 579 filings and 383 weighted filings are substantial, they do not justify the addition of one judgeship on a permanent basis. The Subcommittee, therefore, recommends only the additional temporary judgeship previously approved by the Judicial Conference.

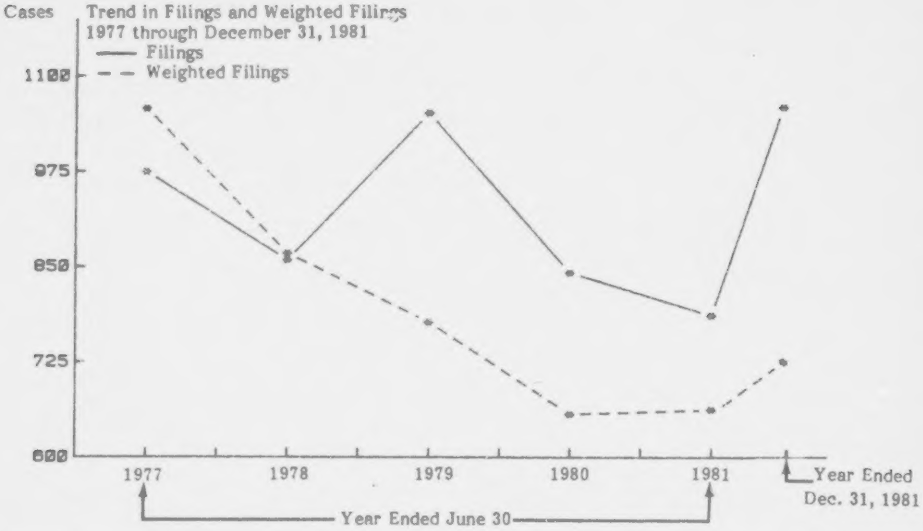
Additional Judgeships Recommended:
By Judicial Conference in 1980 1T **By Subcommittee in 1982** 0 **Total** 1T

NORTH CAROLINA MIDDLE

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings	1,065	791	850	1,058	865	993		
	Terminations	967	860	1,045	939	868	852		
	Pending	905	733	802	997	878	881		
	Percent Change in Total Filings Current Year: Over June ▶		34.6					1	1
	Over Earlier Years ▶			25.3	.7	23.1	7.3	83	8
	Number of Judgeships	3	3	3	3	2	2		
	Vacant Judgeship Months	.0	4.0	12.0	7.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS Total	355	264	283	353	433	497	72	8
	FILINGS Civil	313	226	231	279	300	343	73	8
	FILINGS Criminal	42	38	52	74	133	154	36	5
	Pending Cases	302	244	267	332	439	440	76	7
	Weighted Filings	241	221	219	259	434	529	86	9
	Terminations	322	287	348	313	434	426	74	9
	Trials Completed	31	27	16	25	29	23	69	8
MEDIAN TIMES (MONTHS)	From Filing to Disposition: Criminal	2.8	2.8	2.5	1.8	1.2	1.8	9	2
	From Filing to Disposition: Civil	8	8	6	6	9	8	42	4
	From Issue to Trial (Civil Only)	41	-	-	-	-	-	82	8
	Number (and %) of Civil Cases Over 3 Years Old	104 (12.2)	116 (16.6)	118 (15.7)	99 (10.8)	68 (8.8)	43 (5.7)		
TRIALS	TOTAL	93	82	49	75	58	46		
	10 - 19 Days	–	–	1	–	1	1		
	20 Days and Over	–	–	–	–	–	–		
OTHER	Number of Defendants Filed	197	194	256	309	331	390		
	Number of Diversity Cases Filed	98	125	94	94	84	87		
MDL	Dockets	NA	–	–	–	1	1		
	Cases Pending	NA	–	–	–	6	6		

NA – This information is compiled only for the year ended June 30.



Trend in Filings and Weighted Filings
1977 through December 31, 1981

ANALYSIS

Additional Judgeships Requested: By District 0 Recommended By Circuit Council 0

In 1981, total filings increased 34.6 percent; however both raw filings of 355 per judgeship and weighted filings of 241 per judgeship remain well below the national averages. U. S. contract cases involving recovery of overpayments including veterans benefits were responsible for the large increase in case filings in 1981. The district ranked 76th in the number of pending cases per judgeship in 1981. This district and the Judicial Council made no request for additional judgeships during the most recent survey, and the Subcommittee recommends none.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

NORTH CAROLINA WESTERN

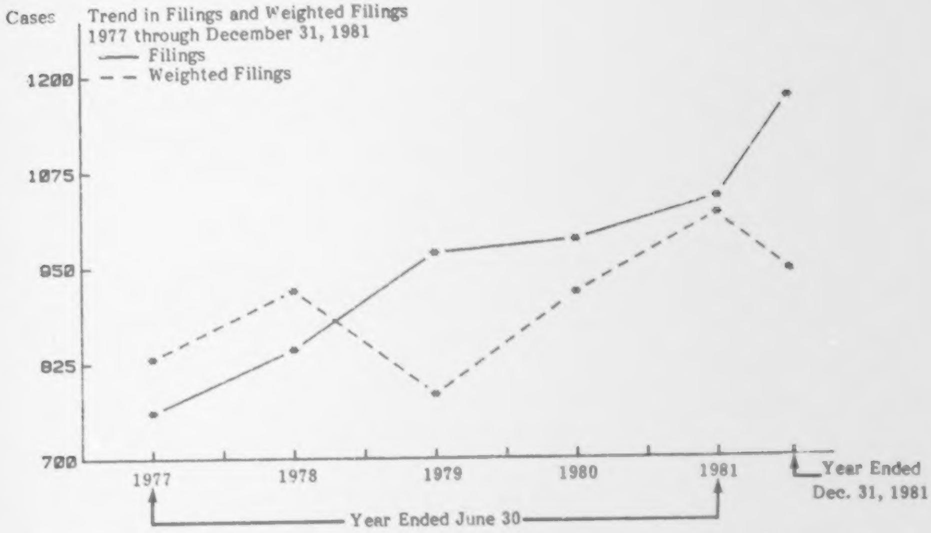
1982 BIENNIAL JUDGESHIP SURVE
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings		1,177	1,047	1,002	983	847	775		
	Terminations		1,077	1,098	831	894	783	857		
	Pending		879	806	857	686	597	533		
	Percent Change in Total Filings Current Year	Over June ▶		12.4					25	4
		Over Earlier Years ▶			17.5	19.7	39.0	51.9	24	2
	Number of Judgeships		3	3	3	3	2	2		
	Vacant Judgeship Months		10.7	12.0	12.0	7.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	392	349	334	328	424	388	59	7
		Civil	343	291	274	258	323	287	63	7
		Criminal	49	58	60	70	101	101	27	3
	Pending Cases		293	259	286	229	299	266	77	8
	Weighted Filings		316	340	306	261	460	415	75	7
	Terminations		359	356	277	298	392	429	59	8
	Trials Completed		49	47	58	65	93	73	25	3
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.4	2.3	2.3	2.3	1.9	2.3	2	1
		Civil	6	7	7	6	8	10	8	2
	From Issue to Trial (Civil Only)		15	18	8	13	9	9	42	5
	Number (and %) of Civil Cases Over 3 Years Old		48 (5.7)	53 (7.0)	41 (5.1)	35 (5.6)	22 (4.1)	13 (2.7)		
TRIALS	TOTAL		147	141	173	194	186	146		
	10 - 19 Days		-	-	1	1	-	1		
	20 Days and Over		-	-	-	-	-	-		
OTHER	Number of Defendants Filed		208	243	232	329	289	261		
	Number of Diversity Cases Filed		185	190	200	171	130	132		
MDL	Dockets		NA	-	-	-	-	2		
	Cases Pending		NA	-	-	-	-	2		

NA – This information is compiled only for the year ended June 30.

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 2

NORTH CAROLINA WESTERN



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Overall filings in this district increased 12.4 percent over last year, resulting in raw filings of 392 per judgeship and weighted filings of 316. This district ranks 77th in the number of pending cases with 293 per judgeship. The district and Judicial Council have not requested additional judgeships, and now that the third judgeship position, which was authorized in 1978, has been filled the three judges should be sufficient to handle the current workload levels. The Subcommittee, therefore, recommends no additional judgeships.

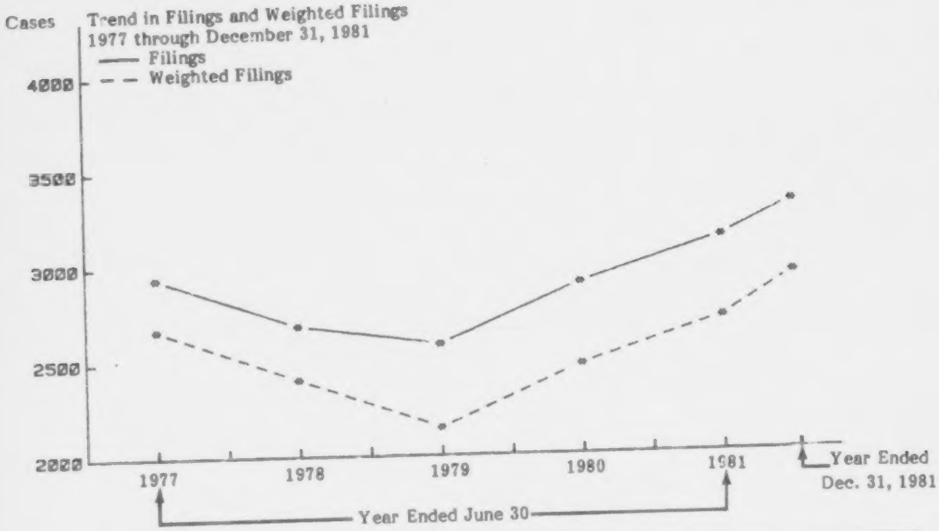
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

SOUTH CAROLINA

1982 BIENNIAL JUDGESHIP SURVE
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings		3,325	3,142	2,909	2,599	2,701	2,956		
	Terminations		3,092	2,951	2,629	2,366	2,451	2,584		
	Pending		3,253	3,133	2,941	2,666	2,433	2,183		
	Percent Change in Total Filings Current Year	Over June ▶		5.8					49	7
		Over Earlier Years ▶			14.3	27.9	23.1	12.5	80	7
	Number of Judgeships		8	8	8	8	5	5		
	Vacant Judgeship Months		10.9	12.0	16.6	23.1	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	416	393	364	325	540	591	51	6
		Civil	376	355	330	293	485	522	50	6
		Criminal	40	38	34	32	55	69	41	6
	Pending Cases		407	392	368	333	487	437	48	4
	Weighted Filings		354	338	309	269	481	534	60	6
	Terminations		387	359	329	296	490	517	45	7
	Trials Completed		36	37	31	27	42	39	58	6
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.8	3.6	4.1	4.5	3.6	3.1	47	7
		Civil	10	10	9	7	7	6	66	7
	From Issue to Trial (Civil Only)		12	14	12	13	10	8	23	4
	Number (and %) of Civil Cases Over 3 Years Old		93 (3.1)	105 (3.6)	186 (6.7)	106 (4.2)	83 (3.6)	57 (2.9)		
TRIALS	TOTAL		293	296	244	218	212	195		
	10 - 19 Days		3	4	4	1	5	3		
	20 Days and Over		-	-	-	-	2	1		
OTHER	Number of Defendants Filed		527	537	436	479	398	530		
	Number of Diversity Cases Filed		1,195	1,100	1,011	819	832	958		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1 Recommended By Circuit Council 0

Total filings increased 5.8 percent during calendar year 1981 and resulted in 416 filings per judgeship. Weighted filings were substantially lower at 354 per judgeship, indicating a less difficult mix of cases than average. Contracts and torts together made up approximately 50 percent of the total filings during 1981; many of the more detailed classifications of case types within these two broad categories are assigned low weights. The pending caseload for the eight authorized judgeships averaged 407, ranking 48th in 1981. The pending caseload includes 93 civil cases over three years old.

The district has requested one additional judgeship on the basis of a substantial amount of asbestos related litigation. Two major asbestos manufacturers and several major users of asbestos products are located in South Carolina. Consequently, this district court has reported numerous product liability asbestos filings involving multiple defendants. Although substantial in number at this time, the Subcommittee is not convinced that this workload cannot be handled by the eight judgeships currently authorized. With a weighted filings level of 354 per judgeship, the district should be able to devote sufficient time to any complex cases including those related to asbestos. The Fourth Circuit Judicial Council did not approve the judgeship request and the Subcommittee recommends no additional judgeships.

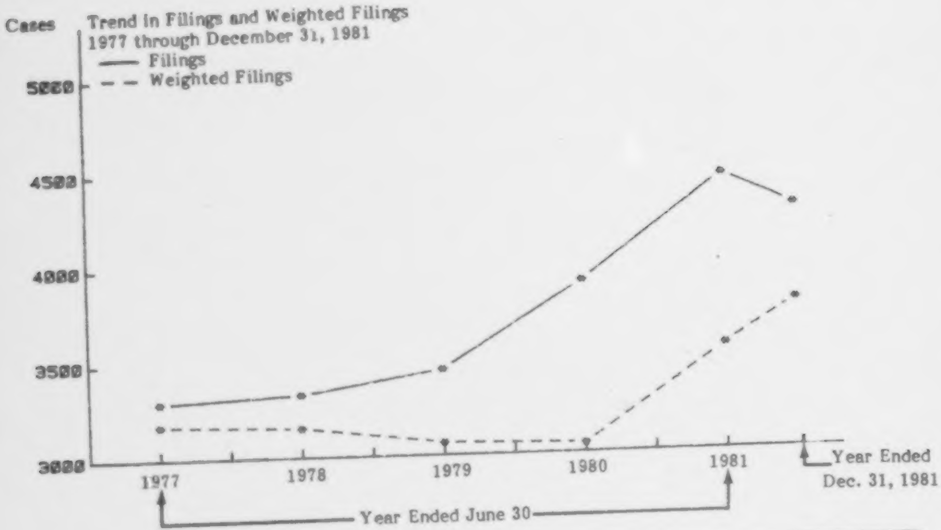
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 By Subcommittee in 1982 0 Total 0

VIRGINIA EASTERN

1982 BIENNIAI JUDGESHIP SURVEY
PAGE 1

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN [illegible]	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings	4,285	4,456	3,913	3,461	3,342	3,315		
	Terminations	4,060	4,147	3,745	3,396	3,284	3,321		
	Pending	2,327	2,394	1,995	1,830	1,765	1,707		
	Percent Change in Total Filings Current Year	Over June ▶	-3.8					85	9
		Over Earlier Years ▶		9.5	23.8	28.2	29.3	54	4
	Number of Judgeships	8	8	8	8	6	6		
	Vacant Judgeship Months	18.5	16.9	24.0	15.4	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS Total	536	557	489	433	557	553	13	4
	FILINGS Civil	482	509	449	390	474	451	15	4
	FILINGS Criminal	54	48	40	43	83	102	19	1
	Pending Cases	291	298	249	229	294	285	78	9
	Weighted Filings	470	444	381	383	526	530	21	1
	Terminations	508	518	468	425	547	554	9	4
	Trials Completed	57	53	51	49	71	68	13	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition Criminal	2.8	2.8	2.6	2.4	1.8	2.3	9	2
	From Filing to Disposition Civil	5	5	5	5	6	6	4	1
	From Issue to Trial (Civil Only)	5	5	6	5	5	5	2	1
	Number (and %) of Civil Cases Over 3 Years Old	128 (6.0)	103 (4.9)	94 (5.1)	71 (4.2)	55 (3.5)	37 (2.5)		
TRIALS	TOTAL	454	421	409	395	424	405		
	10 - 19 Days	5	2	5	1	2	1		
	20 Days and Over	–	–	–	–	1	–		
OTHER	Number of Defendants Filed	579	505	429	422	581	782		
	Number of Diversity Cases Filed	760	726	620	573	559	640		
MDL	Dockets	NA	1	1	2	4	5		
	Cases Pending	NA	1	2	10	17	20		

NA – This information is compiled only for the year ended June 30.


Trend in Filings and Weighted Filings
1977 through December 31, 1981

ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 1

Total filings decreased slightly in 1981 to 536 per judgeship, 13th highest in the nation. Judges in this district averaged 508 terminations during calendar year 1981, and completed an average of 57 trials each.

In 1980 the Judicial Conference recommended one additional judgeship for this district based on its filings and weighted filings. With the additional judgeship position, the 536 filings per judgeship would be reduced to 476, and weighted filings would be reduced to 418 per judgeship. This district did not request any additional judgeship positions beyond the one recommended in 1980 and approved by the Fourth Circuit Judicial Council. The Subcommittee agrees that one additional judgeship (previously recommended by the Judicial Conference) is sufficient.

Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 0 **Total** 1

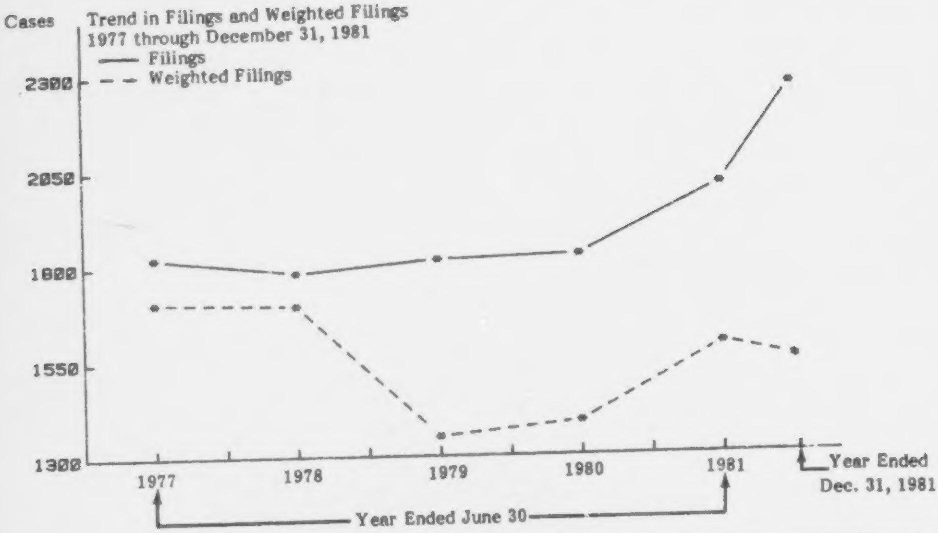
VIRGINIA WESTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN [illegible]	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		2,272	2,012	1,830	1,822	1,792	1,836		
	Terminations		2,109	1,933	1,773	1,528	1,903	2,010		
	Pending		1,545	1,386	1,357	1,300	1,006	1,117		
	Percent Change in Total Filings Current Year	Over June		12.9					23	3
		Over Earlier Years			24.2	24.7	26.8	23.7	61	5
	Number of Judgeships		4	4	4	4	2	2		
	Vacant Judgeship Months		12.0	15.6	24.0	15.4	.0	.0		
ACTIONS PER UDGESHIP	FILINGS	Total	568	503	458	456	896	918	5	2
		Civil	540	474	428	421	817	822	5	1
		Criminal	28	29	30	35	79	96	76	8
	Pending Cases		386	347	339	325	503	559	50	5
	Weighted Filings		385	397	347	338	848	852	46	3
	Terminations		527	496	443	382	952	1,005	7	3
	Trials Completed		50	56	54	42	73	41	21	2
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.0	3.0	2.3	2.2	.5	.9	19	4
		Civil	7	8	8	6	7	7	24	3
	From Issue to Trial (Civil Only)		8	9	14	9	9	10	6	2
	Number (and %) of Civil Cases Over 3 Years Old		87 (5.9)	77 (5.8)	83 (6.4)	60 (4.8)	40 (4.1)	39 (3.6)		
TRIALS	TOTAL		199	222	214	168	146	81		
	10 - 19 Days		–	–	–	–	1	1		
	20 Days and Over		–	–	–	–	–	–		
OTHER	Number of Defendants Filed		188	224	166	175	169	205		
	Number of Diversity Cases Filed		325	341	288	295	229	229		
MDL	Dockets		NA	–	–	–	–	–		
	Cases Pending		NA	–	–	–	–	–		

NA – This information is compiled only for the year ended June 30.

VIRGINIA WESTERN



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

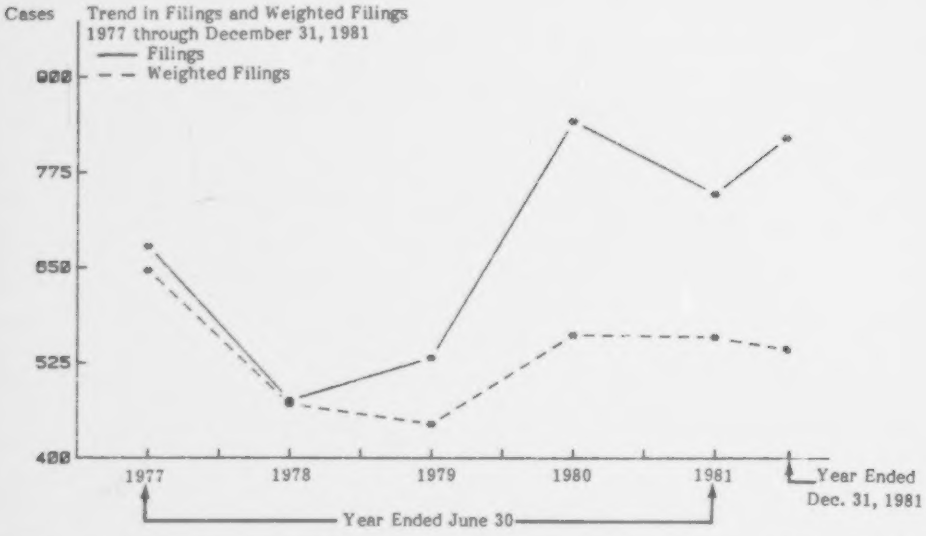
During 1981, total filings increased by 12.9 percent, resulting in an average of 568 filings per judgeship. The weighted filings figure of 385, however, indicates that the mix of cases in this district is below average in difficulty. The majority of filings are U. S. contract cases, prisoner petitions, and social security cases which are assigned lower than average weights. Despite vacancies in the last four years, case terminations and trials completed per authorized judgeship are high. The district and Judicial Council have requested no additional judgeships and the Subcommittee recommends none.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

WEST VIRGINIA NORTHERN

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING	
		December 31	June 30					WITHIN	
		1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings	825	752	845	532	477	683		
	Terminations	700	730	588	518	673	476		
	Pending	1,074	952	940	686	672	868		
	Percent Change in Total Filings Current Year — Over June ▶		9.7					31	5
	Over Earlier Years ▶			-2.4	55.1	73.0	20.9	65	6
	Number of Judgeships	1.5	1.5	1.5	1.5	1.5	1.5		
	Vacant Judgeship Months	.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS — Total	550	501	563	355	318	455	10	3
	FILINGS — Civil	521	468	527	317	269	385	10	3
	FILINGS — Criminal	29	33	36	38	49	70	70	7
	Pending Cases	716	641	627	457	448	579	7	1
	Weighted Filings	364	373	374	297	314	430	58	5
	Terminations	467	487	392	345	449	317	19	5
	Trials Completed	49	50	57	45	47	49	25	3
MEDIAN TIMES (MONTHS)	From Filing to Disposition — Criminal	3.5	3.5	4.2	4.3	4.1	3.3	31	5
	From Filing to Disposition — Civil	14	11	12	15	20	13	85	8
	From Issue to Trial (Civil Only)	-	-	-	-	-	-	-	-
	Number (and %) of Civil Cases Over 3 Years Old	80 (9.0)	79 (10.0)	69 (8.9)	64 (11.4)	44 (7.5)	42 (5.4)		
TRIALS	TOTAL	73	75	86	67	70	73		
	10 - 19 Days	-	-	-	-	-	-		
	20 Days and Over	-	-	-	-	-	-		
OTHER	Number of Defendants Filed	53	64	72	84	92	124		
	Number of Diversity Cases Filed	121	115	104	83	80	88		
MDL	Dockets	NA	-	-	-	1	1		
	Cases Pending	NA	-	-	-	2	2		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 0

Filings during calendar year 1981 were 9.7 percent above filings for the year ended June 30, 1981. This resulted in 550 filings per judgeship and 364 weighted filings per judgeship. The difference in raw and weighted figures indicates that the caseload in West Virginia, Northern is less complex than average. The number of cases pending per judgeship is high at 716, ranking seventh nationwide.

This court has requested that an additional full-time judgeship be authorized for the Northern District primarily because the current roving judge serving both districts will assume the chief judge position in the Southern District in May 1982. He would, therefore, not be able to devote substantial time to the caseload of the Northern District. The Subcommittee realizes that this situation will create a need in the Northern District for assistance in handling the current workload levels. The Subcommittee, however, feels that the problem can be solved without creating additional judgeships and, that it is the responsibility of the Fourth Circuit Judicial Council to see that sufficient judgepower is available for the Northern District. The Judicial Council has recommended no additional judgeships and no change in the existing judgeships. The Subcommittee agrees with the Council and, therefore, recommends no additional judgeships.

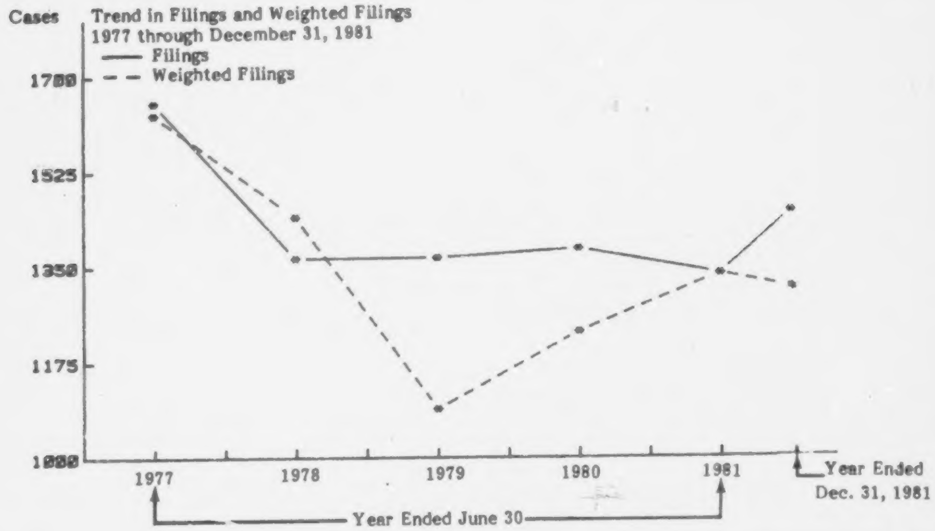
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

WEST VIRGINIA SOUTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings		1,453	1,335	1,390	1,375	1,368	1,660		
	Terminations		2,453	2,120	1,156	1,849	1,491	1,351		
	Pending		1,896	2,290	3,075	2,846	3,320	3,443		
	Percent Change in Total Filings Current Year	Over June ▶		8.8					33	6
		Over Earlier Years ▶			4.5	5.7	6.2	-12.5	88	9
	Number of Judgeships		4.5	4.5	4.5	4.5	2.5	2.5		
	Vacant Judgeship Months		.0	.0	8.8	15.4	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	323	297	309	306	547	664	78	9
		Civil	301	273	281	277	485	580	77	9
		Criminal	22	24	28	29	62	84	85	9
	Pending Cases		421	509	683	632	1,328	1,377	44	3
	Weighted Filings		288	297	274	242	577	652	80	8
	Terminations		545	471	257	411	596	540	5	2
	Trials Completed		22	21	18	21	52	60	89	9
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.3	4.3	4.1	3.8	3.3	2.3	64	8
		Civil	25	31	13	23	18	16	94	9
	From Issue to Trial (Civil Only)		19	22	-	21	22	17	67	7
	Number (and %) of Civil Cases Over 3 Years Old		167 (9.4)	312 (14.4)	886 (30.3)	662 (24.6)	588 (18.6)	294 (9.1)		
TRIALS	TOTAL		100	96	82	96	131	149		
	10 - 19 Days		-	-	5	-	-	-		
	20 Days and Over		1	3	-	-	-	-		
OTHER	Number of Defendants Filed		144	155	199	184	193	518		
	Number of Diversity Cases Filed		392	352	309	286	269	244		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Overall filings increased 8.8 percent in calendar year 1981, resulting in raw filings of 323 and weighted filings of 288 per judgeship. Terminations increased even more with the result that the pending caseload has dropped to 421 cases per judgeship. The district and Judicial Council have not recommended additional judgeships for this court and the Subcommittee agrees that none are required.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

FIFTH CIRCUIT
United States District Courts

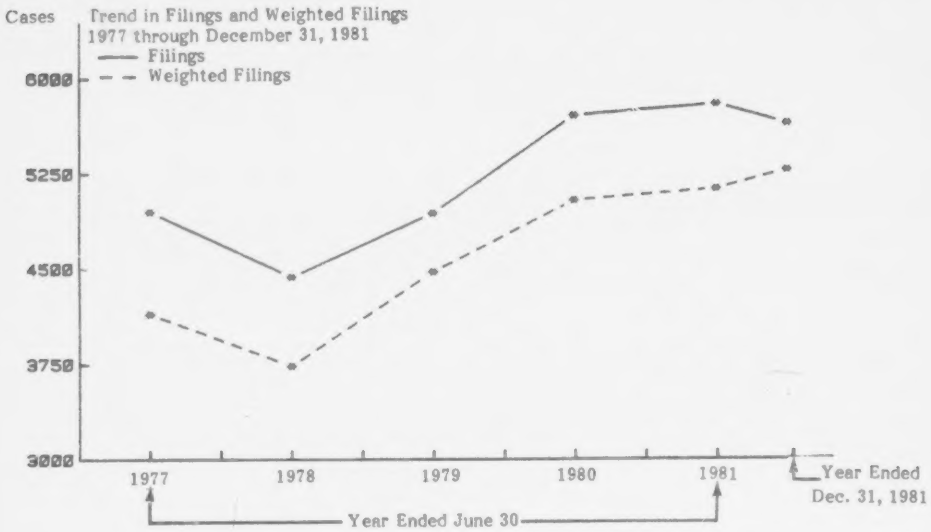
LOUISIANA EASTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings	5,651	5,805	5,717	4,953	4,451	4,963		
	Terminations	5,711	5,807	5,830	4,368	3,926	4,470		
	Pending	6,508	6,508	6,510	6,625	6,040	5,515		
	Percent Change in Total Filings Current Year	Over June ▶	-2.7					80	9
		Over Earlier Years ▶		-1.2	14.1	27.0	13.9	77	9
	Number of Judgeships	13	13	13	13	9	9		
	Vacant Judgeship Months	2.9	.0	14.4	30.8	12.7	.0		
ACTIONS PER JUDGESHIP	FILINGS Total	435	447	440	381	495	551	42	8
	FILINGS Civil	417	427	419	360	454	474	31	7
	FILINGS Criminal	18	20	21	21	41	77	91	8
	Pending Cases	501	501	501	510	671	613	24	6
	Weighted Filings	398	395	388	344	415	460	39	9
	Terminations	439	447	448	336	436	497	25	7
	Trials Completed	45	48	40	33	45	58	31	6
MEDIAN TIMES (MONTHS)	From Filing to Disposition Criminal	3.9	3.8	3.4	3.4	3.0	2.2	51	7
	From Filing to Disposition Civil	11	12	13	14	13	12	72	6
	From Issue to Trial (Civil Only)	16	16	20	19	19	16	49	7
	Number (and %) of Civil Cases Over 3 Years Old	408 (6.4)	409 (6.4)	472 (7.4)	529 (8.1)	403 (6.8)	256 (4.8)		
TRIALS	TOTAL	584	623	515	425	404	524		
	10 - 19 Days	4	2	7	5	5	1		
	20 Days and Over	1	-	1	1	1	1		
OTHER	Number of Defendants Filed	525	534	391	414	487	942		
	Number of Diversity Cases Filed	1,133	1,053	938	767	791	788		
MDL	Dockets	NA	3	4	2	3	3		
	Cases Pending	NA	104	103	34	52	61		

NA – This information is compiled only for the year ended June 30.

LOUISIANA EASTERN



ANALYSIS

Additional Judgeships Requested: By District 0 Recommended By Circuit Council 0

During calendar year 1981, the number of cases filed in this district was nearly 3.0 percent below the number of cases recorded during the year ended June 30, 1981. Despite this drop, the number of cases filed remained high at 435 per authorized judgeship. Weighted filings were lower at 398 per authorized judgeship which ranked 39th among the 95 district courts. Despite this high level of both filings and weighted filings, the district has managed to maintain a constant backlog over the last two and a half year period. On December 31, 1981, the pending caseload was 501 per authorized judgeship which was identical to the figure recorded on June 30, 1980 and slightly below the figure recorded on June 30, 1979. Neither the district nor the Judicial Council have requested that additional judgeships be created for this district and the Subcommittee agrees that the 13 judgeships presently authorized are sufficient.

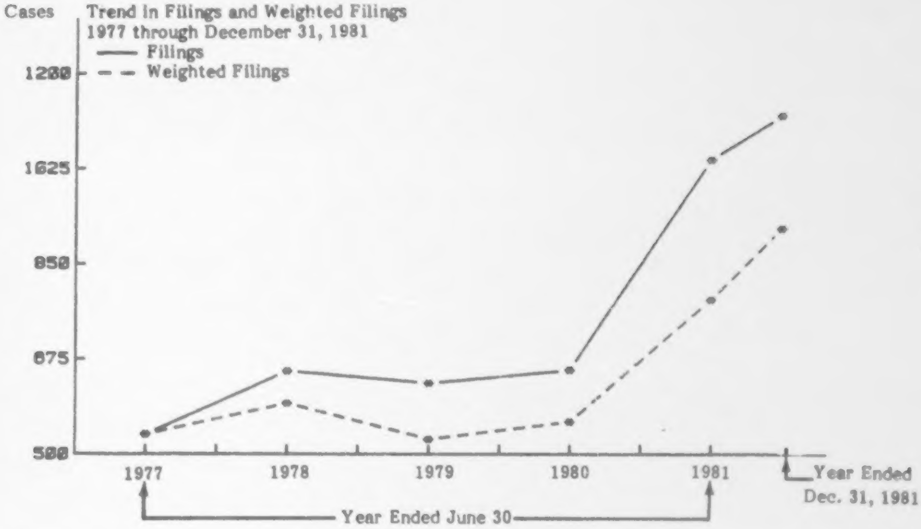
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 By Subcommittee in 1982 0 Total 0

LOUISIANA MIDDLE

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN [illegible]	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		1,123	1,043	656	631	657	539		
	Terminations		988	935	494	482	571	484		
	Pending		1,139	1,031	893	731	582	496		
	Percent Change in Total Filings Current Year		Over June ▶	7.7					40	4
			Over Earlier Years ▶		71.2	78.0	70.9	108.3	3	1
	Number of Judgeships		2	2	2	2	1	1		
	Vacant Judgeship Months		.0	.0	11.0	7.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	562	522	328	316	657	539	8	2
		Civil	547	509	311	299	572	435	4	2
		Criminal	15	13	17	17	85	104	93	9
	Pending Cases		570	516	447	366	582	496	13	3
	Weighted Filings		430	392	280	265	594	537	31	6
	Terminations		494	453	247	241	571	484	11	3
	Trials Completed		41	46	20	11	29	29	42	7
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	5.2	5.6	5.0	4.9	3.0	3.0	87	8
		Civil	8	9	11	10	9	11	42	2
	From Issue to Trial (Civil Only)		17	17	-	-	-	-	55	8
	Number (and %) of Civil Cases Over 3 Years Old		64 (5.8)	55 (6.5)	89 (10.4)	63 (9.1)	50 (9.2)	38 (8.0)		
TRIALS	TOTAL		82	92	39	22	29	29		
	10 - 19 Days		-	1	-	1	-	-		
	20 Days and Over		-	-	-	-	-	-		
OTHER	Number of Defendants Filed		49	37	44	59	112	131		
	Number of Diversity Cases Filed		210	210	142	101	84	101		
MDL	Dockets		NA	1	1	1	1	-		
	Cases Pending		NA	3	6	6	6	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Filings in this district have increased substantially over the last two years primarily as a result of increases in state prisoner civil rights filings and cases involving the recovery of defaulted student loans. During calendar year 1981, filings totaled 562 for each of the two authorized judgeships in this district with weighted filings substantially lower at 430. Since the vacancy on this court was filled in 1980, the number of cases terminated per year has doubled. While the median times for disposing of criminal cases increased slightly over the last few years, median times for disposition of civil cases has been reduced. This district originally requested that one additional judgeship be created; however, after reviewing the preliminary recommendations of the Subcommittee in January 1982, the district withdrew its request for an additional judgeship. The Judicial Council for the Fifth Circuit agreed with that action and made a recommendation for no additional judgeships for this district. The Subcommittee agrees and recommends no additional judgeships for this district.

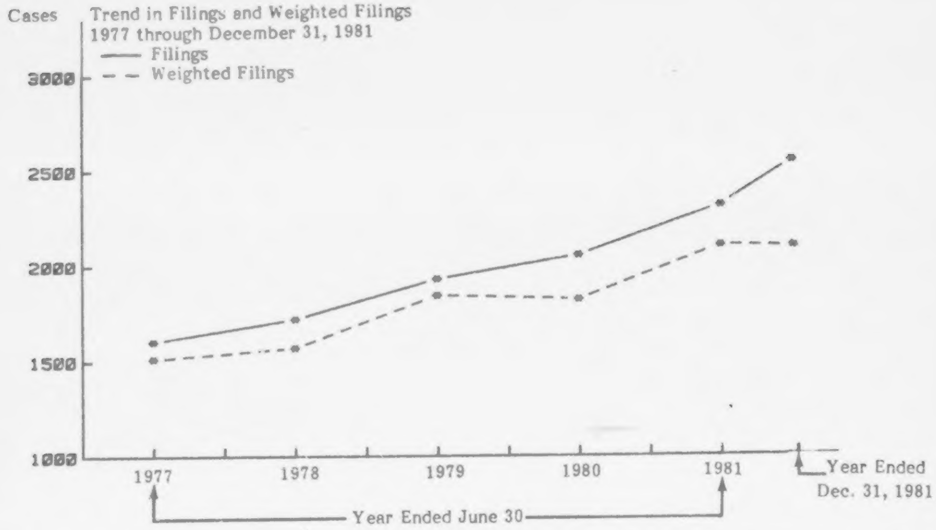
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

LOUISIANA WESTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings		2,561	2,328	2,057	1,945	1,734	1,620		
	Terminations		2,263	2,135	1,841	1,655	1,682	1,621		
	Pending		2,689	2,438	2,185	1,971	1,680	1,628		
	Percent Change in Total Filings Current Year	Over June ▶		10.0					30	2
		Over Earlier Years ▶			24.5	31.7	47.7	58.1	17	2
	Number of Judgeships		5	5	5	5	4	4		
	Vacant Judgeship Months		.0	.0	3.0	7.7	1.1	15.8		
ACTIONS PER JUDGESHIP	FILINGS	Total	512	456	411	389	434	405	17	5
		Civil	489	441	387	362	388	352	12	4
		Criminal	23	25	24	27	46	53	84	7
	Pending Cases		538	492	437	394	420	407	19	6
	Weighted Filings		421	420	364	369	393	379	34	7
	Terminations		453	421	368	331	421	405	20	5
	Trials Completed		39	40	38	43	50	47	49	8
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.4	2.9	4.5	3.1	2.1	2.8	27	5
		Civil	11	11	11	10	12	11	72	6
	From Issue to Trial (Civil Only)		15	14	12	10	10	12	42	5
	Number (and %) of Civil Cases Over 3 Years Old		57 (2.2)	54 (2.3)	51 (2.4)	52 (2.8)	74 (4.6)	60 (3.8)		
TRIALS	TOTAL		196	201	189	216	201	189		
	10 - 19 Days		3	2	3	1	2	–		
	20 Days and Over		–	1	–	2	–	–		
OTHER	Number of Defendants Filed		131	144	170	181	199	246		
	Number of Diversity Cases Filed		529	534	426	445	312	285		
MDL	Dockets		NA	1	1	1	1	1		
	Cases Pending		NA	4	9	22	7	7		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 1

The number of case filings in this district has increased consistently since 1977. In calendar year 1981, filings rose to 512 per authorized judgeship with weighted filings somewhat lower, at 421. The overall rise since 1977 has resulted from increases in most of the major nature of suit categories in the civil caseload. No single category has accounted for a substantial portion of the increase although there has been a substantial increase in cases involving defaulted student loans.

This district has a unique geographical problem in that there are six places of holding court with five active judges residing in five different locations. This makes case management very difficult, especially when a judge in one location becomes tied up in an extremely long and time consuming trial.

The consistent increase in the case filings in this district and the weighted filings level of 421 per judgeship would appear to be sufficient to justify the district's request for one additional judgeship. Increasing the authorized judgeships in this district from five to six would result in a calendar year 1981 filings rate of 427 and weighted filings of 351. This caseload would be more manageable for a district which has six places of holding court with its judges located throughout the district. The Fifth Circuit Judicial Council has recommended one additional judgeship and the Subcommittee agrees with that assessment.

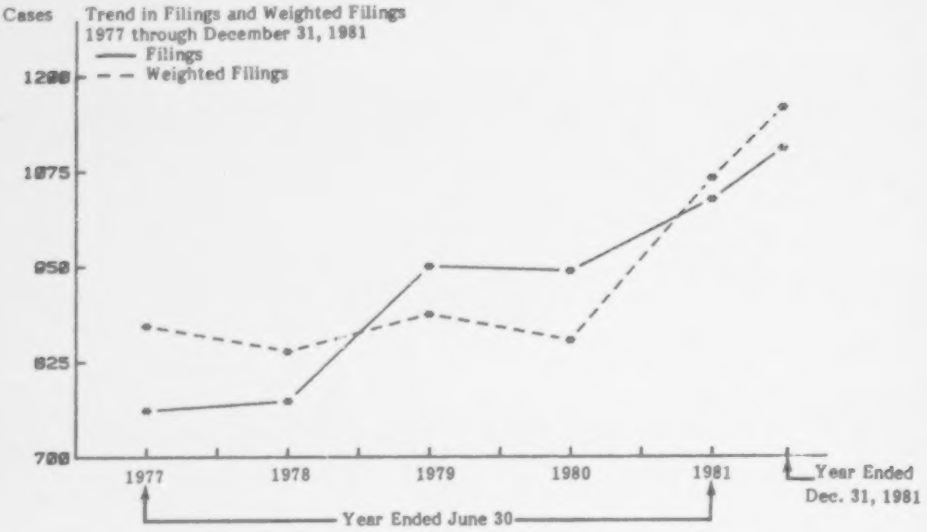
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 1 **Total** 1

MISSISSIPPI NORTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					[illegible]	Circuit
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		1,107	1,040	947	952	777	767		
	Terminations		998	1,012	966	940	743	656		
	Pending		919	847	819	839	827	793		
	Percent Change in Total Filings Current Year	Over June ▶		6.4					47	5
		Over Earlier Years ▶			16.9	16.3	42.5	44.3	34	4
	Number of Judgeships		2	2	2	2	2	2		
	Vacant Judgeship Months		.0	.0	6.7	10.5	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	554	520	474	476	389	384	9	3
		Civil	523	494	455	440	353	327	8	3
		Criminal	31	26	19	36	36	57	66	6
	Pending Cases		460	424	410	420	414	397	30	7
	Weighted Filings		572	533	427	444	420	436	4	3
	Terminations		499	506	483	470	372	328	10	2
	Trials Completed		69	69	56	56	47	65	1	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.8	3.0	3.3	2.9	2.8	3.2	9	1
		Civil	9	8	8	8	12	10	60	3
	From Issue to Trial (Civil Only)		11	11	11	16	12	10	17	2
	Number (and %) of Civil Cases Over 3 Years Old		16 (1.9)	18 (2.4)	28 (4.1)	43 (6.3)	37 (5.5)	21 (3.0)		
TRIALS	TOTAL		137	134	112	111	94	129		
	10 - 19 Days		2	2	1	1	-	3		
	20 Days and Over		-	-	-	-	1	-		
OTHER	Number of Defendants Filed		75	59	55	84	91	168		
	Number of Diversity Cases Filed		423	382	300	306	257	280		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



Trend in Filings and Weighted Filings
1977 through December 31, 1981

ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 1

The number of cases filed in this district in calendar year 1981 was more than 6.0 percent above the number filed during the year ended June 30, 1981. This resulted in 554 filings per authorized judgeship with weighted filings slightly higher at 572. This indicates that the mix of cases in this district is somewhat more difficult than the average. Even with the substantial increase in filings in the last few years, and with the difficult mix of cases, the district had managed to maintain a pending caseload of approximately 400 per authorized judgeship until calendar year 1981. The pending caseload of 460 per judgeship on December 31, 1981 was at its highest level ever.

In 1980, the Judicial Conference recommended one additional judgeship for this district on the basis of a caseload which was substantially lower than the caseload which now exists. With the additional judgeship, the caseload figures for calendar year 1981 would be 369 filings, 381 weighted filings, and 306 pending cases. The Fifth Circuit Judicial Council has recommended one additional judgeship and the Subcommittee agrees that the 1981 caseload figures fully support the recommendation for the one additional judgeship previously approved by the Judicial Conference.

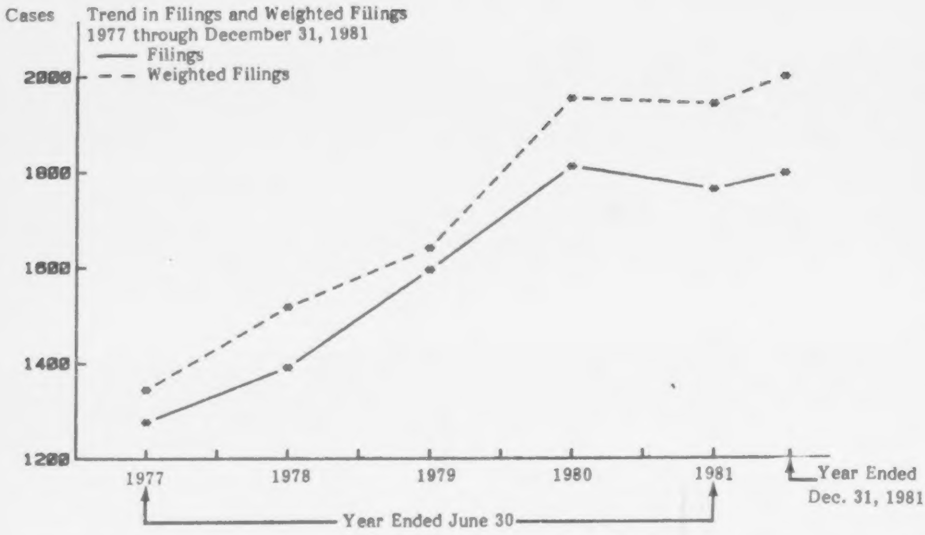
Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 0 **Total** 1

MISSISSIPPI SOUTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		1,807	1,770	1,815	1,601	1,398	1,289		
	Terminations		1,479	1,446	1,513	1,503	1,138	1,088		
	Pending		2,344	2,157	1,841	1,543	1,445	1,185		
	Percent Change in Total Filings Current Year	Over June ▶		2.1					70	8
		Over Earlier Years ▶			-.5	12.9	29.3	40.2	39	6
	Number of Judgeships		3	3	3	3	3	3		
	Vacant Judgeship Months		.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	602	590	605	534	466	430	2	1
		Civil	570	557	588	518	428	379	2	1
		Criminal	32	33	17	16	38	51	65	5
	Pending Cases		781	722	614	514	482	395	2	1
	Weighted Filings		660	648	652	547	506	449	1	1
	Terminations		493	492	504	501	379	363	12	4
	Trials Completed		38	38	47	53	48	43	53	9
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	6.1	4.6	4.0	6.9	3.8	3.3	92	9
		Civil	9	9	9	8	9	8	60	3
	From Issue to Trial (Civil Only)		12	13	10	13	12	13	23	3
	Number (and %) of Civil Cases Over 3 Years Old		98 (4.3)	100 (4.8)	88 (4.9)	61 (4.1)	46 (3.3)	28 (2.5)		
TRIALS	TOTAL		115	115	140	158	144	130		
	10 - 19 Days		2	1	1	-	-	-		
	20 Days and Over		-	-	-	1	-	-		
OTHER	Number of Defendants Filed		132	149	80	66	153	202		
	Number of Diversity Cases Filed		866	877	982	577	547	514		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 3 **Recommended By Circuit Council** 2

Filings in this district have been approximately 600 per authorized judgeship over the last three years. This ranks the district 2nd among all districts nationwide in 1981. The weighted filings level of 660 per judgeship was the highest among all district courts in calendar year 1981. The pending caseload on December 31, 1981, was also among the highest in the country at 781 per judgeship.

The substantial difference between filings and weighted filings in this district results from a large number of civil rights cases and personal injury product liability cases. Most of these product liability cases are asbestos related cases filed by workers exposed to asbestos in shipyards located within the district.

The present caseload in this district is substantial enough to justify the one additional judgeship which had previously been recommended by the Judicial Conference in 1980. The Subcommittee also feels that the caseload statistics fully justify the addition of a second judgeship. If two additional judgeships were added to the three which are presently authorized, the calendar year 1981 filings level would be 361 per judgeship and weighted filings would fall to 396. The pending caseload would fall from its current 781 per judgeship to 469.

The district has requested a total of three additional judgeships (1 approved by the Judicial Conference plus two more), but the Judicial Council recommended only two. The Subcommittee feels that the present workload justifies only two additional judgeships (including the one recommended by the Judicial Conference in 1980) and so recommends.

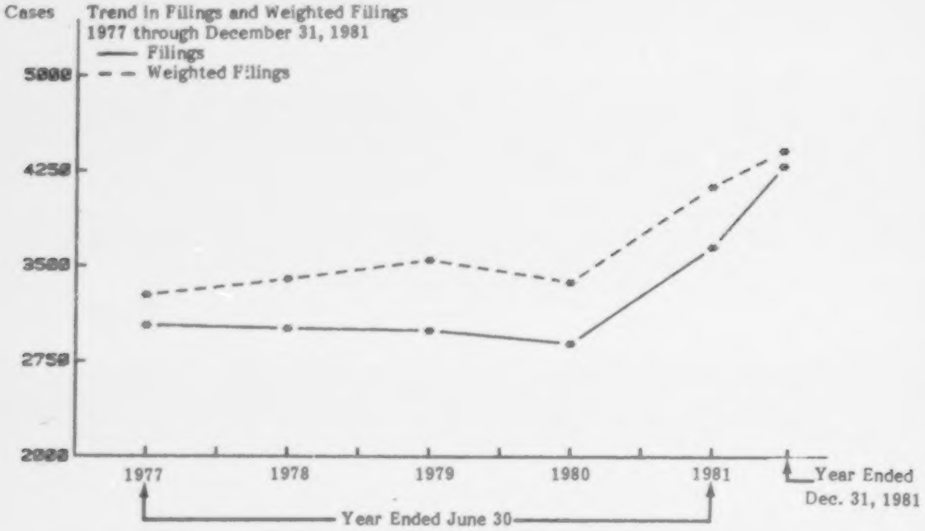
Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 1 **Total** 2

TEXAS NORTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN [illegible]	
			December 31	June 30					[illegible]	[illegible]
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		4,314	3,676	2,914	3,025	3,041	3,074		
	Terminations		4,011	3,516	2,987	2,725	2,791	2,943		
	Pending		3,885	3,695	3,533	3,611	3,311	3,061		
	Percent Change in Total Filings Current Year	Over June ▶		17.4					11	1
		Over Earlier Years ▶			48.0	42.6	41.9	40.3	38	5
	Number of Judgeships		9	9	9	9	6	6		
	Vacant Judgeship Months		.0	.0	5.5	22.4	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	479	408	324	336	507	512	26	6
		Civil	424	355	281	287	407	406	29	6
		Criminal	55	43	43	49	100	106	18	3
	Pending Cases		432	411	393	401	552	510	38	9
	Weighted Filings		486	459	375	395	566	545	17	4
	Terminations		446	391	332	303	465	490	24	6
	Trials Completed		63	56	64	45	66	61	7	3
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.9	3.1	3.1	2.7	1.9	2.4	15	3
		Civil	7	11	12	12	10	12	24	1
	From Issue to Trial (Civil Only)		12	13	15	14	10	11	23	3
	Number (and %) of Civil Cases Over 3 Years Old		251 (7.0)	253 (7.6)	302 (9.1)	314 (9.2)	214 (6.9)	143 (5.0)		
TRIALS	TOTAL		565	591	579	403	394	366		
	10 - 19 Days		6	7	9	5	12	10		
	20 Days and Over		-	-	4	2	1	-		
OTHER	Number of Defendants Filed		704	522	567	716	724	861		
	Number of Diversity Cases Filed		1,183	1,085	930	889	781	782		
MDL	Dockets		NA	2	3	3	3	3		
	Cases Pending		NA	30	21	20	15	19		

NA – This information is compiled only for the year ended June 30.



Trend in Filings and Weighted Filings
1977 through December 31, 1981

ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

In calendar year 1981, filings in this district rose by 17.4 percent over case filings during the year ended June 30, 1981. The increase in filings over the last two years has been concentrated in the civil caseload where cases involving defaulted student loans and overpayments of VA educational benefits, private contract actions, civil rights actions, and civil rights petitions by state prisoners, have all increased substantially. Total filings per judgeship for this year rose to 479 with weighted filings slightly higher at 486.

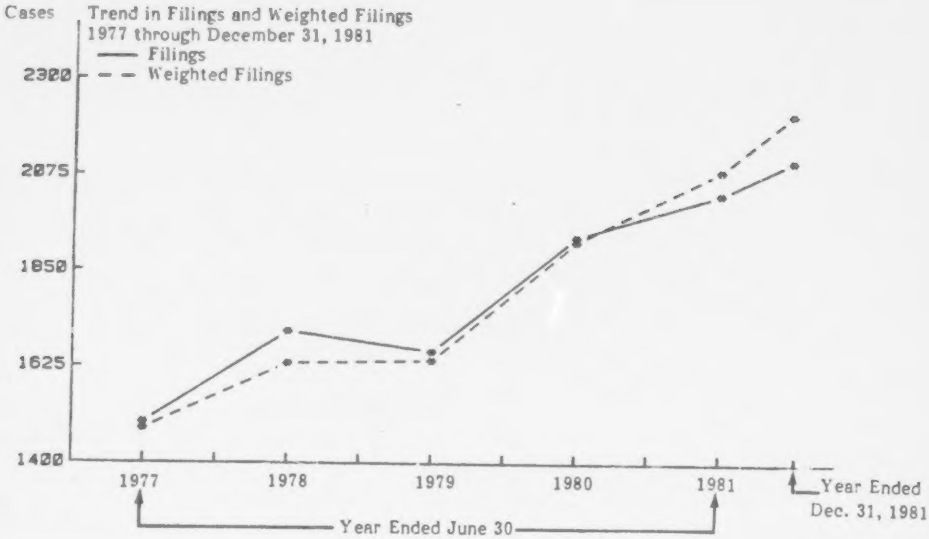
Despite the substantial increase in filings, the district has managed to maintain a pending caseload of approximately 400 cases per judgeship over the last four years. The district reported that senior judges have provided substantial assistance in this accomplishment. It was primarily because of this factor that the district did not request additional judgeships during the biennial survey.

The Fifth Circuit Judicial Council has agreed with the district's evaluation and recommended no additional judgeships. Based on the district's and Judicial Council's responses the Subcommittee recommends no additional judgeships.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	[illegible]
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		2,116	2,038	1,932	1,675	1,719	1,513		
	Terminations		2,066	1,998	1,574	1,396	1,472	1,114		
	Pending		2,741	2,643	2,602	2,246	1,967	1,720		
	Percent Change in Total Filings Current Year	Over June		3.8					58	6
		Over Earlier Years			9.5	26.3	23.1	39.9	41	7
Number of Judgeships			4	4	4	4	3	3		
Vacant Judgeship Months			.0	.0	.0	5.9	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	529	510	483	419	573	504	14	4
		Civil	488	471	452	382	527	440	13	5
		Criminal	41	39	31	37	46	64	39	4
	Pending Cases		685	661	651	562	656	573	8	2
	Weighted Filings		545	521	480	410	545	494	5	2
	Terminations		517	500	394	349	491	371	8	1
	Trials Completed		69	53	52	36	55	61	1	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.8	2.6	5.1	3.2	3.4	2.7	9	1
		Civil	15	16	16	12	12	11	87	9
	From Issue to Trial (Civil Only)		10	10	12	10	8	8	12	1
	Number (and %) of Civil Cases Over 3 Years Old		149 (5.8)	140 (5.6)	132 (5.7)	124 (6.1)	84 (4.6)	56 (3.4)		
TRIALS	TOTAL		276	252	208	143	164	184		
	10 - 19 Days		-	-	12	1	-	2		
	20 Days and Over		-	-	-	-	-	-		
OTHER	Number of Defendants Filed		206	187	167	216	158	244		
	Number of Diversity Cases Filed		705	694	718	527	501	384		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



Trend in Filings and Weighted Filings
1977 through December 31, 1981

ANALYSIS

Additional Judgeships Requested: By District 2 Recommended By Circuit Council 2

In calendar year 1981, the number of cases filed in this district rose to 529 per authorized judgeship compared to 510 during the year ended June 30, 1981. The increased filings in recent years have occurred mainly because of substantial increases in product liability personal injury cases and in prisoner civil rights cases. Over the last four years weighted filings have remained approximately the same as raw filings. The current pending caseload in this district is 8th largest nationwide at 685 per judgeship and includes a substantial number of cases involving personal injury product liability, most of which relate to asbestos litigation.

The district has requested two additional judgeships and the Circuit Council has recommended two. Current caseload statistics for this district clearly justify the one additional judgeship which was previously approved by the Judicial Conference. With the addition of one judgeship, the caseload figures would be as follows: filings - 423, weighted filings - 436, and pending cases - 548. This adjusted workload is still substantial, especially the large number of pending cases. With two additional judgeships, the caseload figures drop to 353 filings, 363 weighted filings and 457 pending cases. A total of six authorized judgeships would appear to be sufficient to handle the current workload of this court. Therefore, the Subcommittee recommends two additional judgeships (including the one approved by the Judicial Conference in 1980).

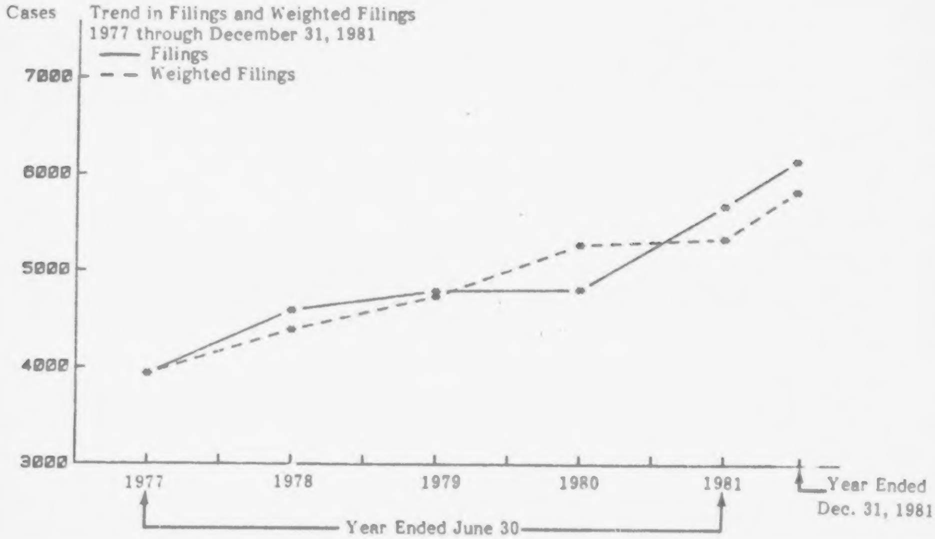
Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 1 **Total** 2

TEXAS SOUTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						[illegible]	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		6,176	5,705	4,844	4,822	4,621	3,961		
	Terminations		5,487	5,173	4,404	4,474	4,374	3,891		
	Pending		6,945	6,598	6,066	5,628	5,279	5,030		
	Percent Change in Total Filings Current Year	Over June ▶		8.3					36	3
		Over Earlier Years ▶			27.5	28.1	33.7	55.9	20	3
Number of Judgeships			13	13	13	13	8	8		
Vacant Judgeship Months			7.2	3.3	14.8	33.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	475	439	373	371	578	495	27	7
		Civil	358	334	287	275	412	354	57	8
		Criminal	117	105	86	96	166	141	3	1
	Pending Cases		534	509	467	433	660	629	20	5
	Weighted Filings		443	411	406	364	549	492	28	5
	Terminations		422	398	339	344	547	486	34	8
	Trials Completed		48	50	51	39	77	58	27	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.9	3.1	2.8	2.7	2.1	3.1	15	3
		Civil	12	13	14	12	15	14	81	8
	From Issue to Trial (Civil Only)		18	19	25	18	20	22	60	9
	Number (and %) of Civil Cases Over 3 Years Old		491 (8.3)	495 (8.7)	536 (10.3)	493 (10.1)	390 (8.8)	379 (8.6)		
TRIALS	TOTAL		621	646	659	503	616	466		
	10 - 19 Days		18	20	18	5	9	7		
	20 Days and Over		1	3	4	5	–	–		
OTHER	Number of Defendants Filed		2,267	2,058	1,776	2,012	2,050	1,819		
	Number of Diversity Cases Filed		960	873	679	506	439	440		
MDL	Dockets		NA	8	5	4	4	3		
	Cases Pending		NA	133	113	87	77	32		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 Recommended By Circuit Council 0

During calendar year 1981 case filings in the Southern District of Texas were more than 8.0 percent above the number filed during the year ended June 30, 1981. This increase resulted in 475 new cases filed per authorized judgeship compared with 439 and 373 during the years ended June 30, 1981 and 1980, respectively. The district has experienced a comparable rise in weighted filings which have grown to 443 in calendar year 1981. The increase in the civil caseload has occurred primarily because of additional filings of cases involving defaulted student loans and overpayments of VA educational benefits, private contract actions, prisoner civil rights actions, and tax suits. The criminal caseload in this district also increased substantially and numbered 117 filings per authorized judgeship, 3rd highest nationwide in 1981. The district's pending caseload in 1981 rose to 534 per judgeship which ranked 20th among all district courts.

Both the district and Judicial Council have recommended no additional judgeships at this time. The Subcommittee agrees with that assessment and recommends no additional judgeships.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

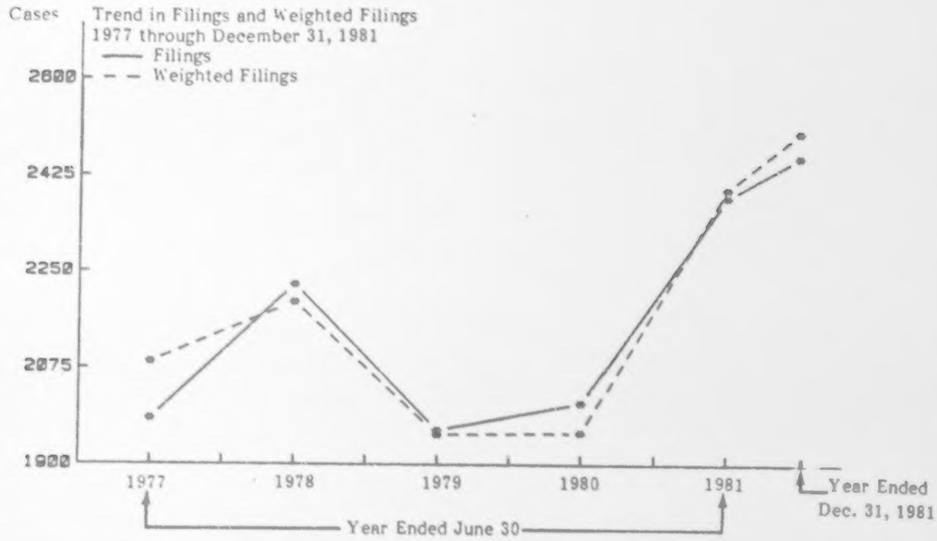
TEXAS WESTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED							
			December 31	June 30					[illegible]	
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		2,472	2,396	2,030	1,988	2,256	2,311		
	Terminations		2,093	2,288	1,772	1,971	2,040	1,906		
	Pending		2,603	2,292	2,184	1,931	1,914	1,698		
	Percent Change in Total Filings Current Year	Over June ▶		3.2					62	7
		Over Earlier Years ▶			21.8	24.3	9.6	22.9	62	8
	Number of Judgeships		6	6	6	6	5	5		
	Vacant Judgeship Months		10.1	15.1	29.3	8.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	412	399	338	331	451	402	55	9
		Civil	318	314	263	221	261	241	70	9
		Criminal	94	85	75	110	190	161	5	2
	Pending Cases		434	382	364	322	383	340	37	8
	Weighted Filings		412	400	326	326	439	417	36	8
	Terminations		349	381	295	329	408	381	65	9
	Trials Completed		57	64	50	57	70	46	13	4
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.5	3.4	3.3	3.4	2.6	2.9	31	6
		Civil	9	9	10	9	11	10	60	3
	From Issue to Trial (Civil Only)		15	20	17	19	19	14	42	5
	Number (and %) of Civil Cases Over 3 Years Old		138 (6.3)	118 (6.2)	179 (9.7)	165 (10.7)	114 (8.0)	101 (7.8)		
TRIALS	TOTAL		339	383	300	340	348	228		
	10 - 19 Days		6	5	4	2	4	2		
	20 Days and Over		-	-	-	1	-	-		
OTHER	Number of Defendants Filed		854	882	679	1,062	1,304	1,217		
	Number of Diversity Cases Filed		387	348	280	235	235	248		
MDL	Dockets		NA	-	2	2	1	1		
	Cases Pending		NA	-	5	5	1	1		

NA – This information is compiled only for the year ended June 30.

TEXAS WESTERN



ANALYSIS

Additional Judgeships Requested: By District 1 Recommended By Circuit Council 1

In calendar year 1981, filings in this district rose to 412 per authorized judgeship with an identical number of weighted filings. The pending caseload per judgeship has grown substantially over the last two years and on December 31, 1981 numbered 434 cases per judgeship.

The district's request for an additional judgeship is based primarily on the substantial criminal caseload which exists in the district. The district's criminal filings of 94 per judgeship in 1981 ranked 5th among all district courts. The request is also based, in part, on geographical problems which exist in any district with such a substantial land mass. This district is the 2nd largest in the country behind Alaska and has seven divisional offices to be served by six active judges. Distances between divisional offices run as high as 700 miles which complicates travel to and from court locations.

The Judicial Council of the Fifth Circuit has recommended that the district's request be approved. The Subcommittee feels that the caseload factors, when considered with the geographical problems in this district, are sufficient to justify the request. The Subcommittee recommends one additional judgeship for this district.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 By Subcommittee in 1982 1 Total 1

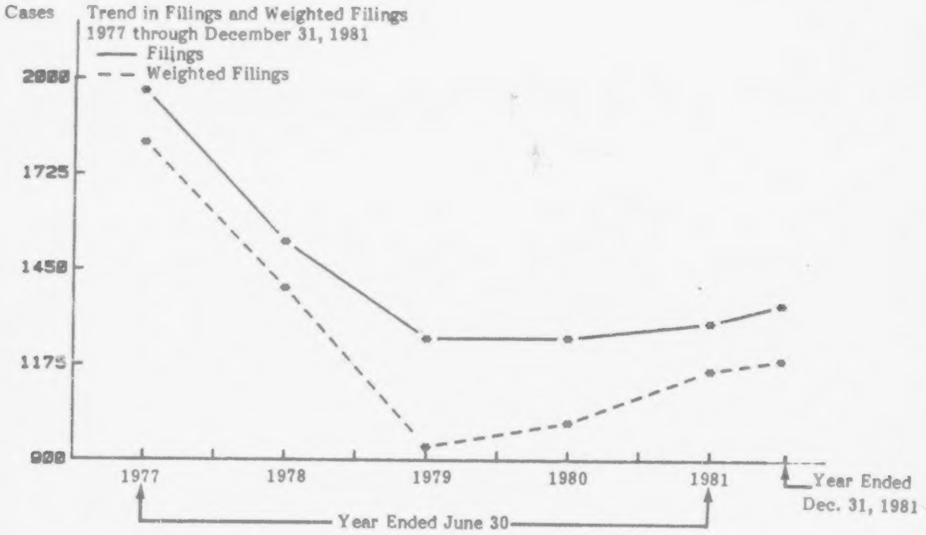
SIXTH CIRCUIT
United States District Courts

KENTUCKY EASTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		1,352	1,301	1,256	1,254	1,538	1,969		
	Terminations		1,988	1,793	994	1,137	1,234	1,394		
	Pending		3,532	3,679	4,171	3,912	3,795	3,491		
	Percent Change in Total Filings Current Year	Over June ▶		3.9					56	5
		Over Earlier Years ▶			7.6	7.8	-12.1	-31.3	89	9
	Number of Judgeships		5.5	5.5	5.5	5.5	3	3		
	Vacant Judgeship Months		8.7	4.9	22.4	23.1	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	246	237	228	228	513	656	90	9
		Civil	220	213	202	197	432	566	87	9
		Criminal	26	24	26	31	81	90	79	8
	Pending Cases		642	659	758	711	1,265	1,164	11	1
	Weighted Filings		216	211	183	171	465	606	91	9
	Terminations		361	326	181	207	411	465	58	8
	Trials Completed		29	33	22	19	40	44	74	7
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.0	4.3	4.6	3.7	3.0	3.4	55	6
		Civil	37	40	21	26	21	11	95	9
	From Issue to Trial (Civil Only)		24	24	-	-	-	19	76	9
	Number (and %) of Civil Cases Over 3 Years Old		1,486 (44.8)	1,591 (45.6)	1,700 (43.0)	1,065 (29.0)	400 (11.3)	118 (3.6)		
TRIALS	TOTAL		160	182	119	103	121	133		
	10 - 19 Days		2	4	4	2	4	1		
	20 Days and Over		1	3	2	3	-	-		
OTHER	Number of Defendants Filed		248	221	247	266	329	350		
	Number of Diversity Cases Filed		297	272	216	173	236	208		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District NR **Recommended By Circuit Council** T/P

Filings of 246 per judgeship and weighted filings of 216 per judgeship have allowed this district time to reduce its backlog of cases. Terminations increased almost 11 percent compared to a 3.9 percent increase in filings. The number of cases pending per judgeship is now down to 642 compared to 758 in 1980. Judgeship vacancies since 1979 have contributed to this large pending backlog. Almost 45 percent of the pending civil caseload is over three years old.

The Sixth Circuit Judicial Council has requested that the present temporary judgeship be converted to a permanent judgeship because of the large pending caseload. Over 50 percent of the backlog, however, is composed of social security cases which are generally handled by magistrates. If the temporary position were to lapse, with only 4.5 judgeships, filings per judgeship would increase to 300 and weighted filings per judgeship would rise to 263. Even these workload statistics are slightly overstated as the judge shared by the two districts in Kentucky resides and spends most of his time in the Eastern District. The current workload even assigned to only 4.5 judges does not appear to justify converting the temporary judgeship to a permanent judgeship. The Subcommittee recommends no additional judgeships.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

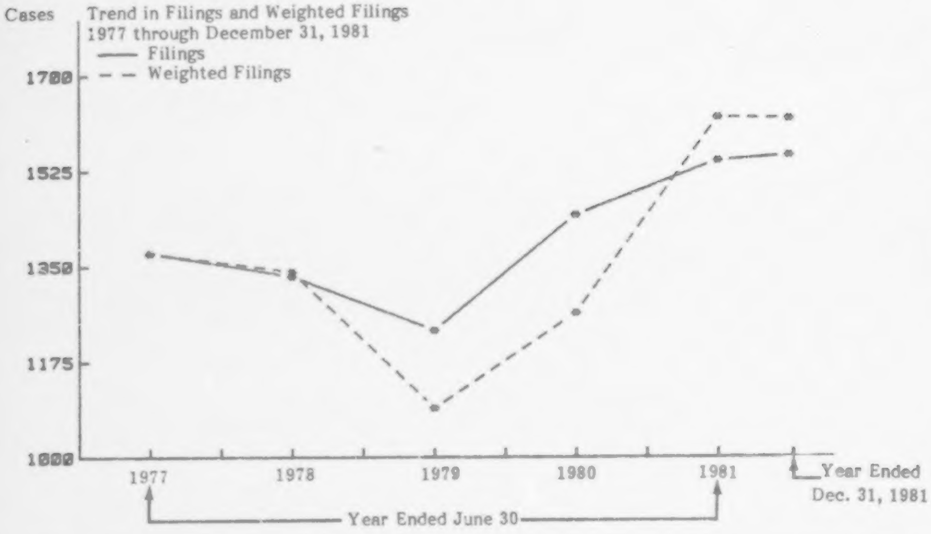
KENTUCKY WESTERN

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings	1,566	1,552	1,455	1,249	1,361	1,390		
	Terminations	1,367	1,360	1,344	1,359	1,395	997		
	Pending	1,745	1,645	1,453	1,344	1,454	1,487		
	Percent Change in Total Filings Current Year	Over June ▶	.9					75	8
		Over Earlier Years ▶		7.6	25.4	15.1	12.7	79	7
	Number of Judgeships	3.5	3.5	3.5	3.5	3	3		
	Vacant Judgeship Months	.0	.0	.0	.0	3.4	12.0		
ACTIONS PER JUDGESHIP	FILINGS Total	447	443	416	357	454	463	40	6
	FILINGS Civil	397	389	361	281	300	341	39	6
	FILINGS Criminal	50	54	55	76	154	122	25	3
	Pending Cases	499	470	415	384	485	496	25	5
	Weighted Filings	462	464	362	312	447	458	23	4
	Terminations	391	389	384	388	465	332	44	7
	Trials Completed	35	35	37	33	33	24	60	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition Criminal	2.5	2.6	2.5	2.3	1.5	1.7	3	1
	From Filing to Disposition Civil	12	11	11	15	15	11	81	7
	From Issue to Trial (Civil Only)	19	20	20	21	22	-	67	7
	Number (and %) of Civil Cases Over 3 Years Old	115 (7.2)	111 (7.5)	109 (8.2)	121 (9.9)	122 (9.3)	72 (5.3)		
TRIALS	TOTAL	121	121	129	116	98	72		
	10 - 19 Days	3	1	1	1	2	1		
	20 Days and Over	1	3	-	1	-	1		
OTHER	Number of Defendants Filed	239	265	284	357	644	497		
	Number of Diversity Cases Filed	372	341	293	242	166	186		
MDL	Dockets	NA	-	-	-	-	-		
	Cases Pending	NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 2

KENTUCKY WESTERN



ANALYSIS

Additional Judgeships Requested: By District 1* Recommended By Circuit Council 1

Filings held steady in calendar year 1981 at 447 per judgeship, with weighted filings slightly higher at 462. Since filings continued to outnumber terminations, the pending caseload rose to 499 per judgeship. This district's median time from filing to disposition of criminal cases ranks third in the nation at 2.5 months. Conversely, civil cases remain open on the docket four months longer than the national average.

The district is authorized three permanent judgeships and shares a fourth with the Eastern District of Kentucky. The judge shared by the two districts resides in the Eastern District and has a very time consuming docket there; consequently he is not able to assist the Western District to the extent required by the caseload. Thus, the workload statistics, being based on 3.5 judgeships, are slightly understated. The Western District has requested that the roving judgeship be made a permanent judgeship in the Eastern District and that an additional full-time judgeship be recommended for the Western District. The Sixth Circuit Judicial Council recommends one additional judgeship for this district but recommends no change in the roving judgeship. The workload in this district would appear to justify an additional position. With 4.5 judgeships, the current workload would be 348 filings, 359 weighted filings and 388 pending cases per judgeship.

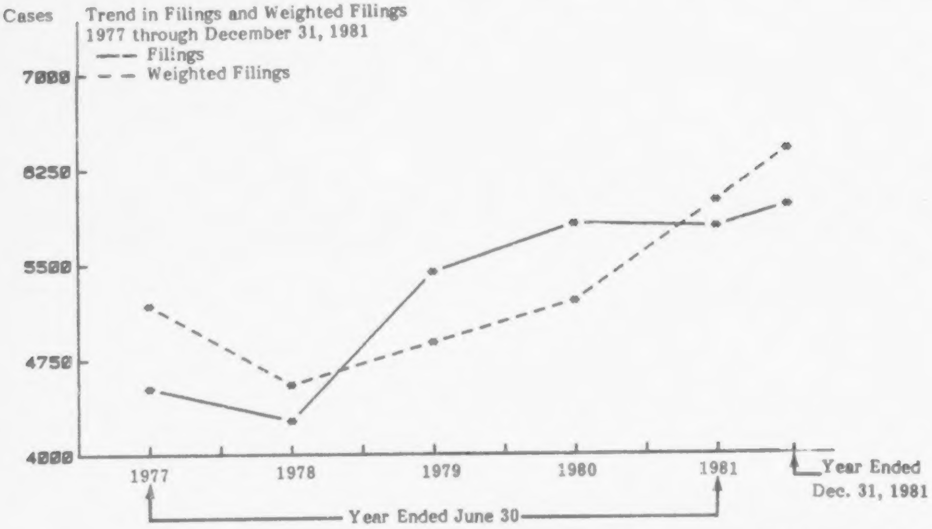
Based on current workload levels the Subcommittee recommends one additional judgeship for the Western District, leaving the roving judgeship in place.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 1 **Total** 1

*Convert roving judgeship to permanent for Eastern District, 1 permanent to Ken., W.

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings	5,977	5,825	5,833	5,468	4,312	4,570		
	Terminations	5,709	6,303	6,032	4,735	3,826	4,500		
	Pending	5,741	5,115	5,591	5,802	5,069	4,582		
	Percent Change in Total Filings Current Year	Over June ▶	2.6					67	6
		Over Earlier Years ▶		2.5	9.3	38.6	30.8	51	6
	Number of Judgeships	13	13	13	13	10	10		
	Vacant Judgeship Months	.0	.0	24.1	29.3	10.5	.0		
ACTIONS PER JUDGESHIP	FILINGS Total	460	448	449	421	431	457	34	4
	FILINGS Civil	431	419	420	380	353	339	24	3
	FILINGS Criminal	29	29	29	41	78	118	70	7
	Pending Cases	442	393	430	446	507	458	35	6
	Weighted Filings	491	451	401	376	455	518	15	3
	Terminations	439	435	464	364	383	450	25	4
	Trials Completed	38	39	36	34	48	65	53	4
MEDIAN TIMES (MONTHS)	From Filing to Disposition Criminal	4.3	4.7	5.1	5.7	5.3	5.8	64	7
	From Filing to Disposition Civil	8	8	8	12	11	11	42	4
	From Issue to Trial (Civil Only)	18	17	19	21	20	21	60	6
	Number (and %) of Civil Cases Over 3 Years Old	298 (5.4)	273 (5.6)	343 (6.4)	319 (5.8)	293 (6.4)	252 (6.4)		
TRIALS	TOTAL	500	497	468	445	475	645		
	10 - 19 Days	32	32	32	18	15	25		
	20 Days and Over	7	7	12	6	9	5		
OTHER	Number of Defendants Filed	600	576	534	829	1,094	1,516		
	Number of Diversity Cases Filed	1,734	1,560	1,317	1,137	1,019	953		
MDL	Dockets	NA	-	1	2	3	2		
	Cases Pending	NA	-	1	11	16	13		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 2 **Recommended By Circuit Council** 2

The rate of new case filings in this district has remained steady over the last two years. During calendar year 1981 there were 460 filings and 491 weighted filings per judgeship. Terminations declined 9.5 percent to 439 per judgeship. With filings outnumbering terminations there was a 12.2 percent increase in the number of cases pending. This district reported 39 trials lasting ten or more days; seven of which lasted at least 20 days.

In 1980 the Judicial Conference recommended one additional judgeship for this district on the basis of the raw and weighted caseload and consistently large number of lengthy trials. The same conditions exist in this district now and, in fact, the weighted caseload is substantially higher than in 1980. With one additional judgeship filings would drop to 427 per judgeship, weighted filings would fall to 456 per judgeship and pending cases would be 410 per judgeship. This leaves the district with a heavy caseload, and the court has requested one judgeship over and above the one recommended by the Judicial Conference. The Sixth Circuit Judicial Council agrees with their request for a total of two additional judgeships. With 15 judgeships 1981 workload averages would be 398 filings, 426 weighted filings and 383 pending cases per judgeship. The Subcommittee, therefore, recommends two additional judgeships (including the one previously recommended by the Judicial Conference).

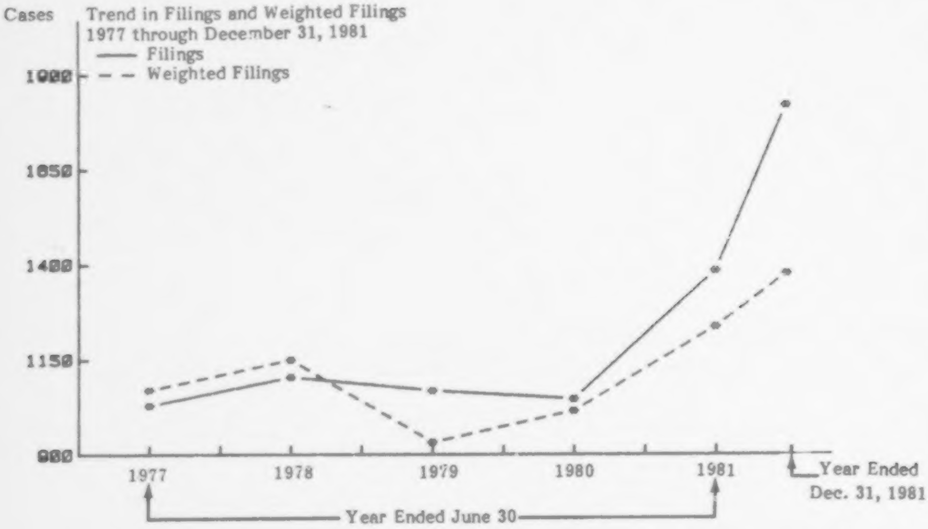
Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 1 **Total** 2

MICHIGAN WESTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1982	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings		1,826	1,395	1,053	1,086	1,120	1,049		
	Terminations		1,956	1,752	928	793	718	900		
	Pending		2,115	2,022	2,388	2,265	1,972	1,569		
	Percent Change in Total Filings Current Year	Over June ▶		31.8					4	1
		Over Earlier Years ▶			73.4	68.1	63.0	74.1	8	1
	Number of Judgeships		4	4	4	4	2	2		
	Vacant Judgeship Months		.0	.0	6.1	15.4	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	457	346	263	272	560	525	35	5
		Civil	423	317	245	237	464	405	29	5
		Criminal	34	29	18	35	96	120	59	6
	Pending Cases		529	536	597	566	986	785	21	3
	Weighted Filings		342	309	254	233	575	536	67	8
	Terminations		489	439	232	198	359	450	13	3
	Trials Completed		32	32	30	31	38	63	67	6
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.7	5.2	6.2	5.5	4.6	4.9	82	9
		Civil	20	26	22	18	22	16	91	8
	From Issue to Trial (Civil Only)		22	25	22	-	-	31	74	8
	Number (and %) of Civil Cases Over 3 Years Old		199 (10.0)	257 (13.5)	549 (24.5)	368 (18.1)	216 (12.8)	144 (10.1)		
TRIALS	TOTAL		129	128	118	125	75	125		
	10 - 19 Days		5	9	8	3	-	2		
	20 Days and Over		1	-	1	1	1	-		
OTHER	Number of Defendants Filed		182	189	115	241	248	289		
	Number of Diversity Cases Filed		267	234	174	124	129	124		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

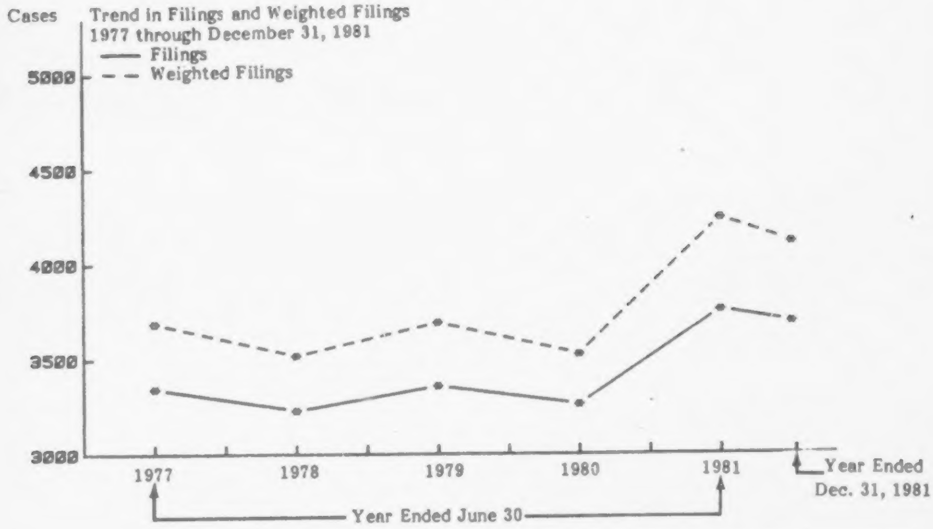
In calendar year 1981, total filings rose 31.8 percent over the year ended June 30, 1981. Most of the increase was in U. S. contract cases and state prisoner petitions which are generally uncomplicated cases and are given average or less than average weights. This explains, in part, why weighted filings per judgeship (342) are substantially less than total filings per judgeship (457). Pending cases per judgeship rose slightly to 529; however, this district should be able to devote time to clearing up this backlog now that it has a full complement of judges. Neither the district nor the Judicial Council have requested additional judgeships and based on the current workload statistics, the Subcommittee recommends no additional judgeships.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

OHIO NORTHERN

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING	
			December 31	June 30					U.S.	WITHIN CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		3,709	3,790	3,283	3,376	3,268	3,381		
	Terminations		3,279	3,292	3,190	2,879	3,147	3,331		
	Pending		4,205	3,914	3,416	3,328	2,931	2,710		
	Percent Change in Total Filings Current Year	Over June ▶		-1.9					79	9
		Over Earlier Years ▶			13.0	9.9	13.5	9.7	82	8
	Number of Judgeships		10	10	10	10	8	8		
	Vacant Judgeship Months		22.2	16.4	22.6	15.4	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	371	378	328	338	409	422	67	8
		Civil	347	351	302	308	348	343	61	8
		Criminal	24	27	26	30	61	79	82	9
	Pending Cases		421	391	342	333	354	339	44	7
	Weighted Filings		411	424	353	369	440	461	37	7
	Terminations		328	328	319	288	393	416	71	9
	Trials Completed		27	30	34	36	48	77	82	8
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.6	3.7	3.3	3.7	2.6	3.3	39	4
		Civil	7	8	7	6	6	6	24	3
	From Issue to Trial (Civil Only)		12	12	12	10	9	7	23	4
	Number (and %) of Civil Cases Over 3 Years Old		382 (9.4)	333 (8.8)	327 (10.0)	310 (9.8)	195 (7.5)	136 (5.5)		
TRIALS	TOTAL		274	298	340	357	384	614		
	10 - 19 Days		5	6	9	7	8	11		
	20 Days and Over		4	4	1	1	2	2		
OTHER	Number of Defendants Filed		292	343	365	384	554	775		
	Number of Diversity Cases Filed		741	719	594	640	532	640		
MDL	Dockets		NA	4	3	3	3	2		
	Cases Pending		NA	30	10	10	11	7		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District T/P&1 **Recommended By Circuit Council** T/P&1T

Total filings declined slightly to 371 per judgeship in calendar year 1981, while weighted filings were 411 per judgeship indicating this district has a more complex mix of cases than average. Much of the caseload is made up of civil rights cases, product liability actions and antitrust suits which require substantial amounts of judge time and are given heavier than average weights. Over the last three years the district has experienced more than 81 months of judgeship vacancies. As a result of this, terminations per authorized judgeship remained lower than average at 328 per judgeship and the pending caseload grew to 421 per judgeship. The workload situation in the district is further complicated by several lengthy trials each year.

The Judicial Conference in 1980 recommended that the present temporary judgeship be converted to a permanent judgeship position because the workload clearly exceeded what nine judges could handle once the temporary position vanished. With nine judgeships, filings per judgeship would be 412 and weighted filings would rise to 457 per judgeship. On this basis, the Subcommittee recommends that the temporary position be converted to permanent.

The district has requested one additional judgeship but the Sixth Circuit Judicial Council has recommended an additional temporary rather than permanent judgeship for Ohio, Northern. The Subcommittee agrees with the Judicial Council that a further temporary judgeship is required by this district to prevent a continuation of the increase in pending cases and to compensate for the loss of judgepower due to vacancies. With eleven judgeships, calendar year 1981 filings would be 337, weighted filings 374, and pending cases 382 per judgeship. Therefore, the Subcommittee recommends that the current temporary judgeship be converted to a permanent position and that one additional five-year temporary judgeship be created.

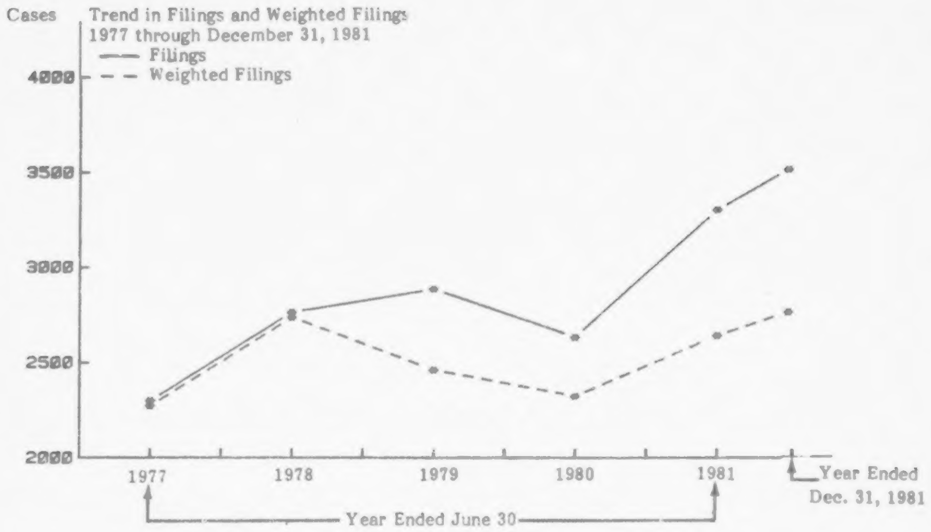
Additional Judgeships Recommended:
By Judicial Conference in 1980 T/P **By Subcommittee in 1982** 1T **Total** T/P&1T

OHIO SOUTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings		3,530	3,315	2,648	2,896	2,792	2,330		
	Terminations		3,296	3,042	2,479	2,521	2,461	2,093		
	Pending		3,374	3,229	2,956	2,789	2,414	2,083		
	Percent Change in Total Filings Current Year	Over June ▶		6.5					46	3
		Over Earlier Years ▶			33.3	21.9	26.4	51.5	26	3
Number of Judgeships			6	6	6	6	5	5		
Vacant Judgeship Months			.0	.0	27.9	7.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	588	553	441	483	558	466	3	1
		Civil	551	514	408	442	495	399	3	1
		Criminal	37	39	33	41	63	67	52	5
	Pending Cases		562	538	493	465	483	417	16	2
	Weighted Filings		453	441	398	411	548	455	24	5
	Terminations		549	507	413	420	492	419	4	1
	Trials Completed		26	30	22	30	34	36	84	9
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.2	3.2	3.2	2.9	2.5	2.9	22	3
		Civil	8	8	9	8	8	7	42	4
	From Issue to Trial (Civil Only)		14	15	19	17	15	14	36	5
	Number (and %) of Civil Cases Over 3 Years Old		258 (7.8)	215 (6.9)	192 (6.7)	132 (4.9)	127 (5.4)	75 (3.8)		
TRIALS	TOTAL		155	181	133	181	172	179		
	10 - 19 Days		8	4	3	2	2	3		
	20 Days and Over		1	-	1	-	1	1		
OTHER	Number of Defendants Filed		296	316	296	327	382	410		
	Number of Diversity Cases Filed		407	393	348	281	298	250		
MDL	Dockets		NA	1	1	-	-	-		
	Cases Pending		NA	12	9	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District NR **Recommended By Circuit Council** 0

Civil and criminal filings increased 6.5 percent to 588 per judgeship, ranking Ohio, Southern third nationwide in calendar year 1981. Weighted filings, however, remain substantially lower at 453 per judgeship. This difference between the raw and the weighted caseload is primarily due to the large number of social security cases, student loan cases, and prisoner petitions filed. These cases are usually handled by magistrates and are assigned weights lower than average.

This district ranks fourth in the nation in the number of terminations per judgeship and appears to be able to handle its current workload. The district and the Sixth Circuit Judicial Council did not request any additional judgeships, and the Subcommittee recommends none.

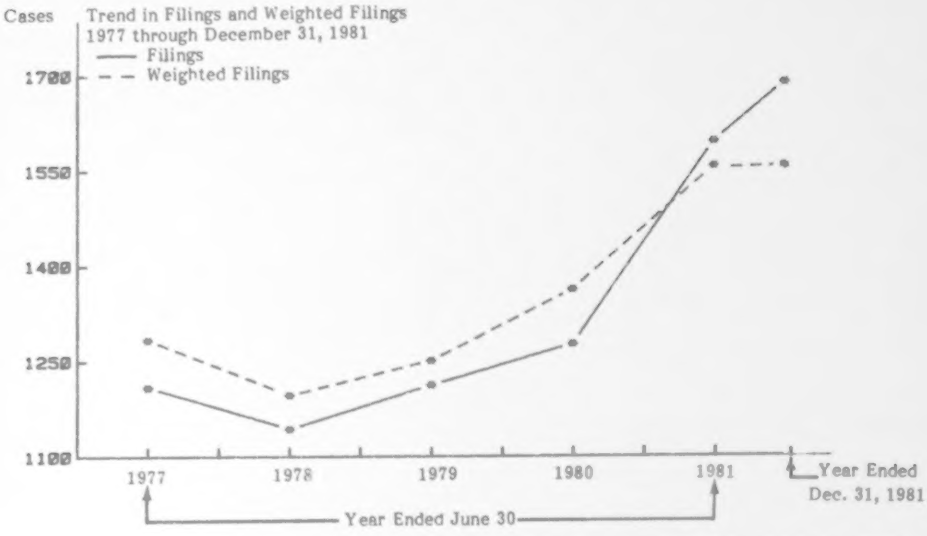
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

TENNESSEE EASTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings	1,696	1,602	1,283	1,219	1,154	1,231		
	Terminations	1,610	1,515	1,203	1,200	1,214	1,166		
	Pending	805	722	635	558	539	599		
	Percent Change in Total Filings Current Year — Over June		5.9					48	4
	Percent Change in Total Filings Current Year — Over Earlier Years			32.2	39.1	47.0	37.8	45	5
	Number of Judgeships	3	3	3	3	3	3		
	Vacant Judgeship Months	.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS — Total	565	534	428	406	385	410	7	2
	FILINGS — Civil	522	502	376	369	337	339	9	2
	FILINGS — Criminal	43	32	52	37	48	71	33	4
	Pending Cases	268	241	212	186	180	200	83	9
	Weighted Filings	517	519	454	417	399	428	11	2
	Terminations	537	505	401	400	405	389	6	2
	Trials Completed	44	41	47	49	57	63	36	3
MEDIAN TIMES (MONTHS)	From Filing to Disposition — Criminal	2.6	2.7	1.9	2.5	1.6	2.2	5	2
	From Filing to Disposition — Civil	4	4	4	4	5	5	1	1
	From Issue to Trial (Civil Only)	3	3	4	6	5	6	1	1
	Number (and %) of Civil Cases Over 3 Years Old	4 (.5)	1 (.2)	2 (.3)	3 (.6)	4 (.8)	1 (.2)		
TRIALS	TOTAL	131	122	140	147	171	189		
	10 - 19 Days	2	2	1	1	-	-		
	20 Days and Over	-	2	-	1	1	-		
OTHER	Number of Defendants Filed	185	121	220	150	203	296		
	Number of Diversity Cases Filed	511	499	452	389	370	340		
MDL	Dockets	NA	-	-	-	-	-		
	Cases Pending	NA	-	-	-	-	-		

NA — This information is compiled only for the year ended June 30.


Trend in Filings and Weighted Filings
1977 through December 31, 1981

ANALYSIS

Additional Judgeships Requested: By District 1 Recommended By Circuit Council 1

Case filings rose 5.9 percent to 565 per judgeship during calendar year 1981, while weighted filings were slightly lower at 517 per judgeship. Most of the rise in filings was caused by an increase in U. S. contract cases involving the federal government's attempts to collect delinquent student loans and recover overpayments of veterans' benefits. These cases are weighted less than average and are one reason for the substantial difference between raw and weighted filings. The median time from filing to disposition of civil cases is the fastest in the nation at four months and the 2.6 months median time for criminal cases ranks Tennessee, Eastern, fifth in the nation. Terminations per judgeship are sixth highest in the country despite the extensive amount of traveling the judges are required to do to serve the four divisions.

The district and the Sixth Circuit Judicial Council have requested one additional judgeship on the basis of the weighted caseload. With a fourth judgeship total filings would drop to 424 per judgeship and weighted filings would fall to 388 per judgeship. The Subcommittee recommends one additional judgeship on the basis of the weighted caseload.

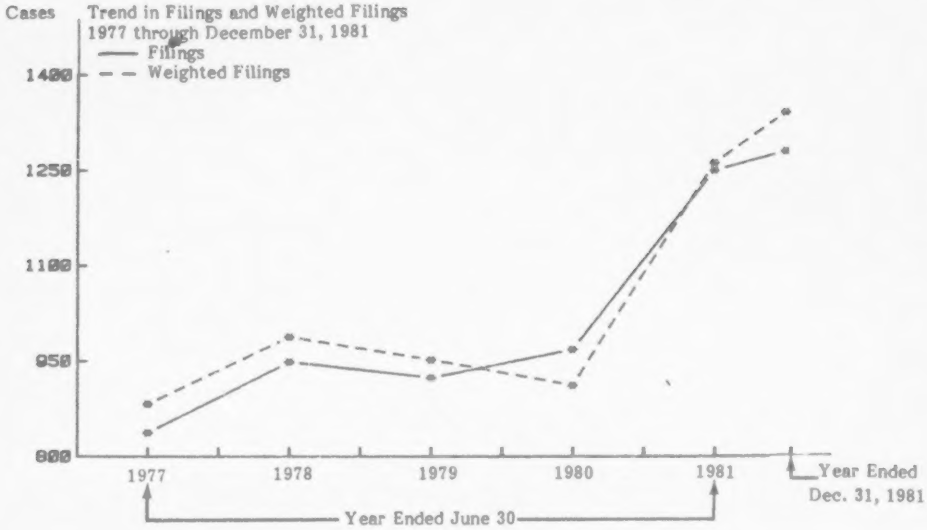
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 By Subcommittee in 1982 1 Total 1

TENNESSEE MIDDLE

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDINGS WITHIN [illegible]	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		1,287	1,259	978	934	957	852		
	Terminations		1,269	1,193	954	959	844	756		
	Pending		935	922	846	825	850	737		
	Percent Change in Total Filings Current Year	Over June		2.2					69	7
		Over Earlier Years			31.6	37.8	34.5	51.1	29	4
	Number of Judgeships		3	3	3	3	2	2		
	Vacant Judgeship Months		.0	.0	10.7	9.5	11.5	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	429	420	326	311	479	426	47	7
		Civil	367	370	271	254	359	342	53	7
		Criminal	62	50	55	57	121	84	10	2
	Pending Cases		312	307	282	275	425	369	72	8
	Weighted Filings		429	420	304	317	494	441	32	6
	Terminations		423	394	318	320	422	378	32	6
	Trials Completed		50	56	40	40	64	58	21	2
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.7	4.3	4.3	4.6	2.5	2.6	40	5
		Civil	6	7	7	11	9	7	8	2
	From Issue to Trial (Civil Only)		11	13	17	19	13	11	17	2
	Number (and %) of Civil Cases Over 3 Years Old		44 (5.4)	48 (5.8)	37 (5.1)	23 (3.2)	39 (5.2)	113 (17.3)		
TRIALS	TOTAL		150	167	121	121	128	115		
	10 - 19 Days		3	1	4	-	1	1		
	20 Days and Over		2	3	2	1	1	2		
OTHER	Number of Defendants Filed		272	198	240	240	292	218		
	Number of Diversity Cases Filed		262	228	171	191	189	163		
MDL	Dockets		NA	-	-	-	1	2		
	Cases Pending		NA	-	-	-	6	6		

NA – This information is compiled only for the year ended June 30.



Trend in Filings and Weighted Filings
1977 through December 31, 1981

ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

In calendar year 1981 total filings and weighted filings rose slightly to 429 per judgeship. With all three judgeship positions filled the district continued to increase case terminations to 423 per judgeship. As a result, the pending caseload increased only slightly and, at 312 per judgeship, is among the lowest in the country. Median time from filing to disposition for criminal cases was reduced significantly and is now under the national average of 3.8 months. Civil cases are disposed of two months faster than the national average.

The district has not requested any additional judgeships and the Sixth Circuit Judicial Council agrees that three judges are able to handle the workload. The Subcommittee recommends no additional judgeships.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

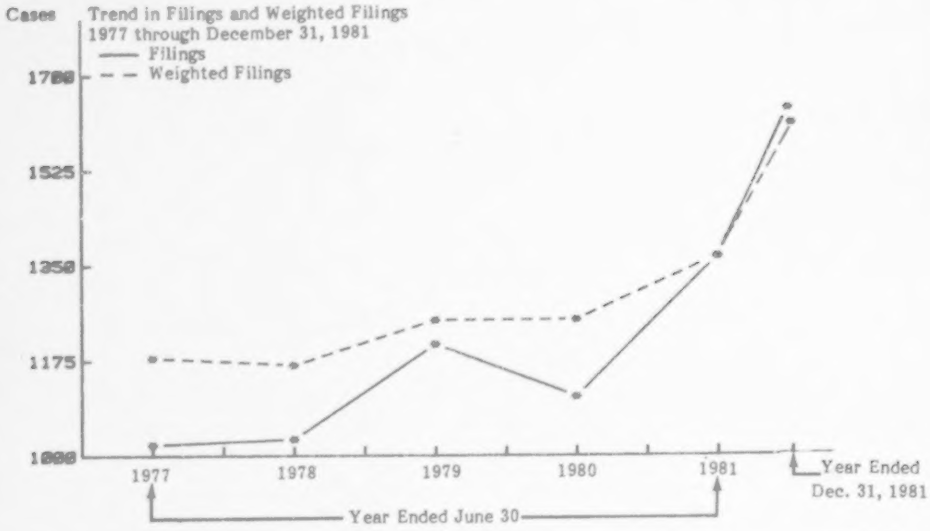
TENNESSEE WESTERN

**1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1**

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings		1,648	1,380	1,114	1,223	1,039	1,025		
	Terminations		1,299	1,112	1,014	1,208	1,134	743		
	Pending		1,540	1,371	1,102	1,005	990	1,085		
	Percent Change in Total Filings Current Year	Over June ▶		19.4					8	2
		Over Earlier Years ▶			47.9	34.8	58.6	60.8	14	2
	Number of Judgeships		3	3	3	3	3	3		
	Vacant Judgeship Months		.0	.0	7.7	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	549	450	371	408	346	342	11	3
		Civil	429	379	290	336	274	281	25	4
		Criminal	120	81	81	72	72	61	1	1
	Pending Cases		513	457	367	335	330	362	22	4
	Weighted Filings		536	456	417	416	389	393	8	1
	Terminations		433	371	338	403	378	248	31	5
	Trials Completed		68	71	68	87	70	57	3	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.6	5.4	5.4	6.0	6.9	6.8	80	8
		Civil	8	9	9	9	11	9	42	4
	From Issue to Trial (Civil Only)		11	11	12	14	10	10	17	2
	Number (and %) of Civil Cases Over 3 Years Old		96 (7.1)	77 (6.5)	63 (6.7)	61 (7.2)	52 (6.6)	47 (5.3)		
TRIALS	TOTAL		204	214	203	261	211	170		
	10 - 19 Days		4	5	2	3	1	6		
	20 Days and Over		-	-	3	1	-	1		
OTHER	Number of Defendants Filed		489	360	365	316	331	283		
	Number of Diversity Cases Filed		249	252	249	225	223	244		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.

TENNESSEE WESTERN



ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 1

Case filings rose 19.4 percent over the year ended June 30, 1981 to 549 per judgeship; weighted filings rose to 536 per judgeship. The criminal caseload is the highest in the country at 120 cases per judgeship, almost triple the national average. Terminations increased 16.8 percent but, offset by the higher increase in filings, the pending caseload increased 12.3 percent.

In 1980 the Judicial Conference recommended one additional judgeship for this district on the basis of the filings and weighted filings per judgeship. With four judgeships, total filings drop to 412 per judgeship, weighted filings to 402 per judgeship and cases pending to 385 per judgeship. Neither the district nor the Sixth Circuit Judicial Council has requested any judgeships beyond the one recommended in 1980 and the Subcommittee agrees that four judgeships would be sufficient to handle the workload.

Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 0 **Total** 1

SEVENTH CIRCUIT
United States District Courts

ILLINOIS NORTHERN

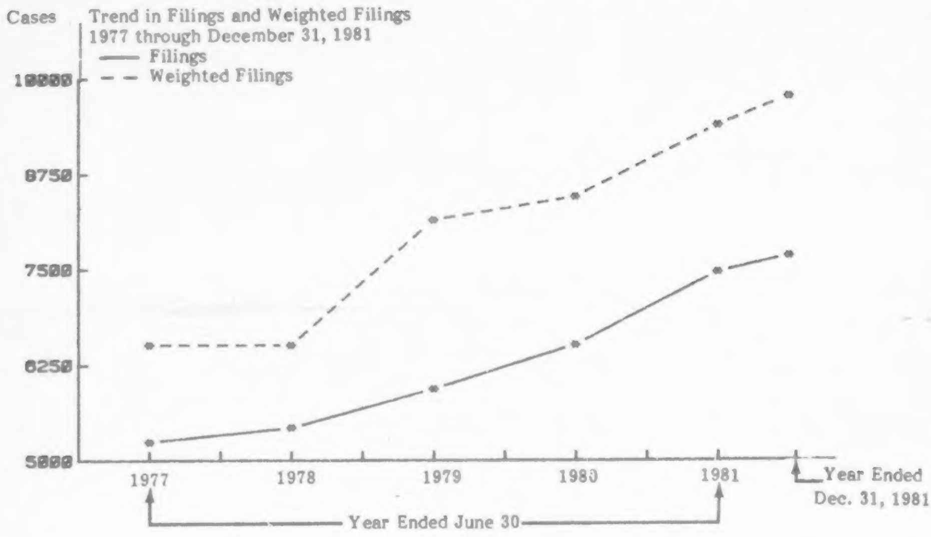
1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						[illegible]	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		7,709	7,534	6,533	5,975	5,485	5,300		
	Terminations		7,026	6,622	6,018	5,609	5,453	4,949		
	Pending		7,307	6,815	5,930	5,425	5,057	5,026		
	Percent Change in Total Filings Current Year	Over June ▶		2.7						
		Over Earlier Years ▶			18.0	29.0	40.5	45.5	66 33	5 5
	Number of Judgeships		16	16	16	16	13	13		
	Vacant Judgeship Months		19.0	12.7	40.6	27.3	9.1	23.4		
ACTIONS PER JUDGESHIP	FILINGS	Total	482	459	408	373	422	408	24	3
		Civil	453	443	386	336	380	349	22	3
		Criminal	29	26	22	37	42	59	70	6
	Pending Cases		457	426	371	339	389	387	33	4
	Weighted Filings		606	537	528	509	501	501	3	1
	Terminations		439	414	376	351	419	381	25	2
	Trials Completed		45	43	40	38	43	25	31	2
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	5.0	4.9	5.3	5.0	5.7	6.3	85	6
		Civil	6	6	6	6	7	7	9	2
	From Issue to Trial (Civil Only)		18	17	18	18	18	13	60	5
	Number (and %) of Civil Cases Over 3 Years Old		503 (7.4)	468 (7.3)	446 (8.1)	420 (8.6)	347 (7.7)	238 (5.4)		
TRIALS	TOTAL		723	695	637	607	556	319		
	10 - 19 Days		22	26	22	20	19	13		
	20 Days and Over		10	10	10	4	8	6		
OTHER	Number of Defendants Filed		659	651	576	917	753	1,113		
	Number of Diversity Cases Filed		2,381	2,311	2,023	1,553	1,381	1,291		
MDL	Dockets		NA	8	8	7	5	5		
	Cases Pending		NA	188	171	127	123	108		

NA – This information is compiled only for the year ended June 30.

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 2

ILLINOIS NORTHERN



ANALYSIS

Additional Judgeships Requested: By District 3&1T **Recommended By Circuit Council** 3&1T

Overall filings increased 2.7 percent during calendar year 1981, resulting in 482 filings per judgeship. Weighted filings were significantly higher at 606 per judgeship, third highest among all districts. The substantial difference between raw and weighted filings is due to a complex mix of cases which includes large numbers of antitrust cases, civil rights actions and certain labor law suits. In addition, this district reported 32 trials which lasted more than 10 days. This district's workload continues to justify the two additional judgeships approved by the Judicial Conference in 1980. With 18 judges filings would fall to 428 per judgeship and weighted filings would be reduced to 539 per judgeship.

The district has requested one additional permanent judgeship to meet current filing levels and one additional temporary judgeship to help reduce the large backlog of civil cases. The backlog is due, in part, to the large number of judicial vacancies this district has experienced over the last six years. Currently, there are 457 cases pending per judgeship, despite a termination rate of 439 per judgeship. If the two judgeships recommended by the Judicial Conference are authorized, the pending figure would drop to 406 per judgeship.

If a third permanent judgeship is recommended, increasing the number of judgeships to 19, raw filings per judgeship would drop to 406 and weighted filings per judgeship would drop to 510. These adjusted caseload figures would appear to fully justify the district's request for a fourth judgeship on a temporary basis. A court of 20 judgeships would result in 1981 caseload figures of 385 filings per judgeship and 485 weighted filings. The pending caseload would drop to 365. Accordingly, the Subcommittee recommends 3 additional judgeships (including the two previously recommended by the Judicial Conference) and one five-year temporary judgeship.

Additional Judgeships Recommended:
By Judicial Conference in 1980 2 **By Subcommittee in 1982** 1&1T **Total** 3&1T

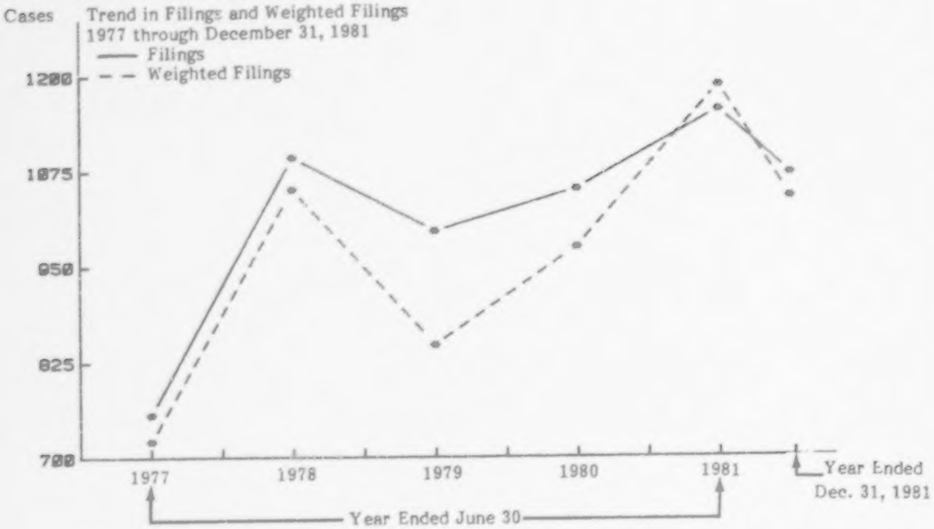
ILLINOIS CENTRAL

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

		TWELVE MONTH PERIOD ENDED						[illegible]	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings	1,079	1,156	1,055	1,008	0	0		
	Terminations	977	921	1,130	807	0	0		
	Pending	966	996	761	836	0	0		
	Percent Change in Total Filings Current Year: Over June ▶		-6.7					92	7
	Over Earlier Years ▶			2.3	7.0	.0	.0	–	–
	Number of Judgeships	3	3	3	3	0	0		
	Vacant Judgeship Months	.0	.0	.0	3.3	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS: Total	360	385	352	336	0	0	70	7
	FILINGS: Civil	318	338	315	295	0	0	70	7
	FILINGS: Criminal	42	47	37	41	0	0	36	3
	Pending Cases	322	332	254	279	0	0	67	7
	Weighted Filings	346	395	325	282	-	-	65	7
	Terminations	326	337	377	269	0	0	72	7
	Trials Completed	38	45	36	34	0	0	53	3
MEDIAN TIMES (MONTHS)	From Filing to Disposition: Criminal	3.7	3.6	2.8	4.4	-	-	42	4
	From Filing to Disposition: Civil	6	6	6	10	-	-	8	2
	From Issue to Trial (Civil Only)	14	15	13	18	-	-	36	3
	Number (and %) of Civil Cases Over 3 Years Old	54 (5.9)	38 (4.0)	41 (5.8)	45 (5.9)	0 (.0)	0 (.0)		
TRIALS	TOTAL	114	134	107	103	53	103		
	10 - 19 Days	–	2	3	1	1	1		
	20 Days and Over	–	–	–	–	1	–		
OTHER	Number of Defendants Filed	173	210	147	160	NA	NA		
	Number of Diversity Cases Filed	186	187	142	166	146	138		
MDL	Dockets	NA	–	–	–	–	–		
	Cases Pending	NA	–	–	–	–	–		

NA – This information is compiled only for the year ended June 30.

** - **Public Law 95-408 established the District Court of Illinois, Central on April 1, 1979.**



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

During calendar year 1981, overall filings fell 6.7 percent to 1,079; terminations increased 6.1 percent resulting in a 3.0 percent reduction in the number of pending cases. The 322 cases pending per judgeship, compares favorably to the national average of 408. The district and Judicial Council have not requested any additional judgeships and the Subcommittee recommends no additional judgeships.

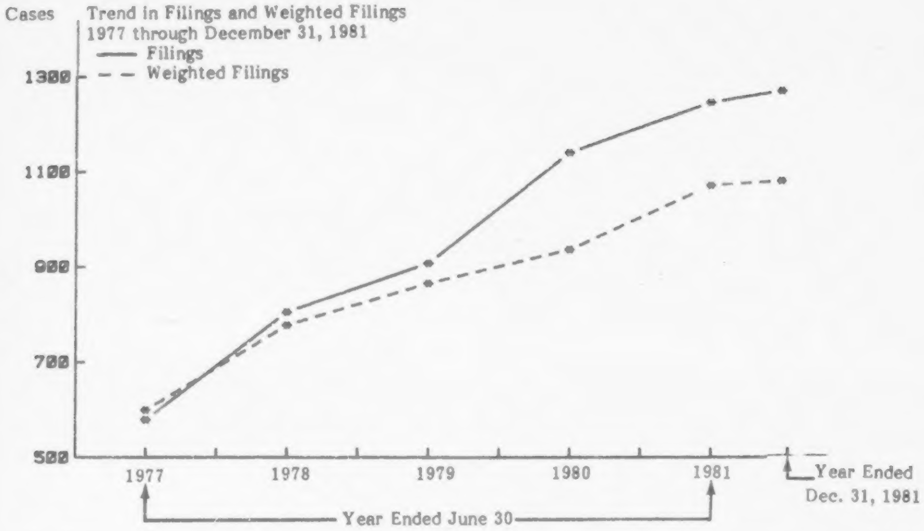
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

ILLINOIS SOUTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings		1,273	1,247	1,145	913	0	0		
	Terminations		1,240	1,231	1,126	908	0	0		
	Pending		1,300	1,154	1,118	1,101	0	0		
	Percent Change in Total Filings Current Year	Over June ▶		2.1					70	6
		Over Earlier Years ▶			11.2	39.4	.0	.0	–	–
	Number of Judgeships		2	2	2	2	0	0		
	Vacant Judgeship Months		.0	.0	3.7	7.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	637	624	573	457	0	0	1	1
		Civil	584	553	526	403	0	0	1	1
		Criminal	53	51	47	54	0	0	20	1
	Pending Cases		650	592	559	551	0	0	10	1
	Weighted Filings		542	535	468	433	-	-	6	2
	Terminations		620	631	563	454	0	0	1	1
	Trials Completed		61	55	45	20	0	0	9	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.3	2.8	3.7	3.6	-	-	24	1
		Civil	11	11	13	8	-	-	72	7
	From Issue to Trial (Civil Only)		12	14	13	-	-	-	23	1
	Number (and %) of Civil Cases Over 3 Years Old		46 (3.7)	33 (2.9)	37 (3.6)	54 (5.1)	0 (.0)	0 (.0)		
TRIALS	TOTAL		121	110	90	39	86	65		
	10 - 19 Days		–	1	–	3	1	–		
	20 Days and Over		–	–	–	–	–	–		
OTHER	Number of Defendants Filed		144	182	139	143	NA	NA		
	Number of Diversity Cases Filed		230	236	232	184	176	164		
MDL	Dockets		NA	–	–	–	–	–		
	Cases Pending		NA	–	–	–	–	–		

NA – This information is compiled only for the year ended June 30.
** - Public Law 95-408 established the District Court of Illinois, Southern on April 1, 1979.



ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 1

Although filings increased again in 1981, the rate of the increase slowed to only 2.1 percent compared to 8.9 percent during the year ended June 30, 1981. The 637 filings per judgeship ranks Illinois, Southern first nationwide. This district ranks first in terminations per judgeship (620) and sixth in weighted filings per judgeship (542). Despite the excellent termination rate per judgeship, the pending caseload continues to grow and the median disposition time for civil cases remains high. These workload statistics continue to justify the additional judgeship recommended in 1980 by the Judicial Conference.

With an additional judgeship this court's workload would decline to 424 filings per judgeship, 361 weighted filings per judgeship and 433 pending cases per judgeship. Illinois, Southern and the Seventh Circuit Judicial Council have requested only the one judgeship previously approved by the Judicial Conference and the Subcommittee agrees that the one additional judgeship should be sufficient.

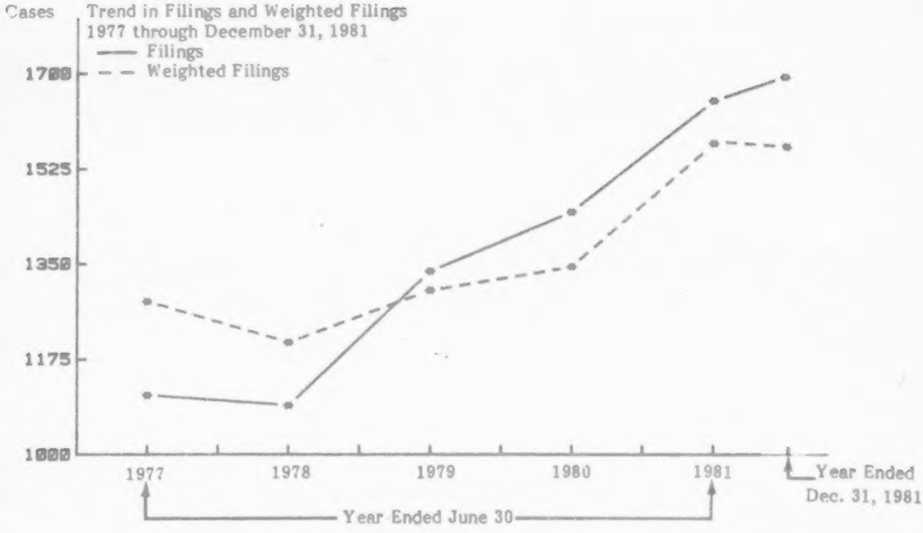
Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 0 **Total** 1

INDIANA NORTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						[illegible]	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		1,698	1,652	1,457	1,348	1,098	1,123		
	Terminations		1,504	1,489	1,339	1,118	1,111	1,078		
	Pending		1,997	1,935	1,772	1,654	1,423	1,436		
	Percent Change in Total Filings Current Year	Over June ▶		2.8					65	4
		Over Earlier Years ▶			16.5	26.0	54.6	51.2	27	4
	Number of Judgeships		4	4	4	4	3	3		
	Vacant Judgeship Months		17.3	15.0	12.0	7.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	425	413	364	337	366	374	48	6
		Civil	392	388	335	305	305	294	41	6
		Criminal	33	25	29	32	61	80	60	5
	Pending Cases		499	484	443	414	474	479	25	3
	Weighted Filings		392	393	336	326	402	427	43	5
	Terminations		376	372	335	280	370	359	55	6
	Trials Completed		24	27	42	37	52	43	86	7
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.4	4.1	3.7	4.0	3.6	4.4	27	2
		Civil	7	7	10	11	15	16	24	5
	From Issue to Trial (Civil Only)		12	11	12	19	15	24	23	1
	Number (and %) of Civil Cases Over 3 Years Old		157 (8.7)	157 (9.2)	124 (8.2)	94 (6.7)	120 (10.7)	162 (13.3)		
TRIALS	TOTAL		94	109	166	146	156	129		
	10 - 19 Days		1	1	1	3	1	3		
	20 Days and Over		–	–	–	2	–	2		
OTHER	Number of Defendants Filed		152	146	176	184	252	382		
	Number of Diversity Cases Filed		431	422	361	342	278	335		
MDL	Dockets		NA	–	–	–	–	–		
	Cases Pending		NA	–	–	–	–	–		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1T Recommended By Circuit Council 1T

Filings rose 2.8 percent during calendar year 1981, resulting in 425 filings per judgeship. Weighted filings were lower at 392 per judgeship.

The pending caseload now stands at 499 per judgeship due, in part, to the 52.0 vacant judgeship months in this district in the last four years. The Judicial Conference in 1980 recommended that one additional temporary judgeship be authorized for Indiana, Northern to alleviate the rising backlog of cases.

With five judgeships, the 1981 workload figures would be 340 case filings, 313 weighted filings, and 399 pending cases per judgeship. The Seventh Circuit Judicial Council has recommended that one temporary judgeship be approved. The Subcommittee agrees that the temporary judgeship recommended by the Judicial Conference in 1980 is still required.

Additional Judgeships Recommended:
By Judicial Conference in 1980 1T **By Subcommittee in 1982** 0 **Total** 1T

INDIANA SOUTHERN

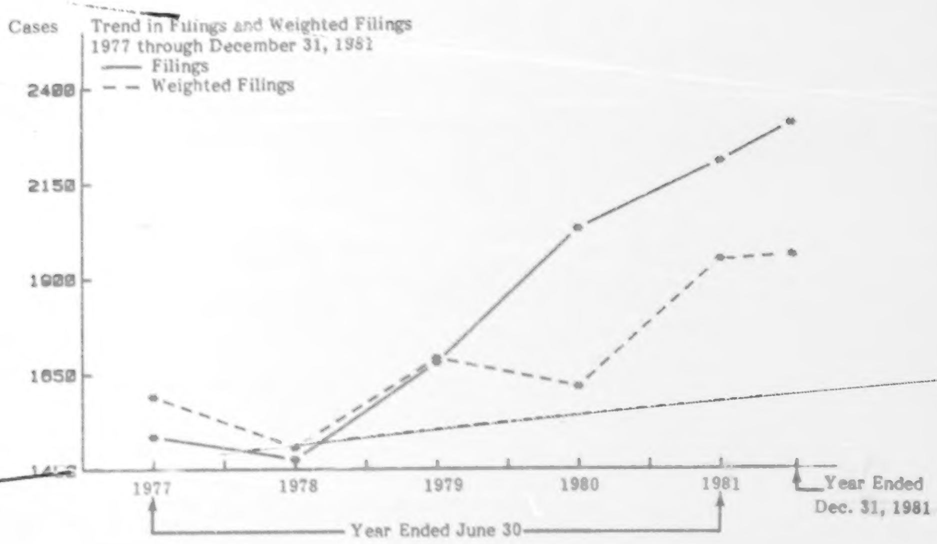
1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		2,323	2,228	2,045	1,701	1,456	1,517		
	Terminations		2,170	2,147	1,823	1,489	1,378	1,407		
	Pending		2,132	2,033	1,952	1,733	1,520	1,442		
	Percent Change in Total Filings Current Year	Over June ▶		4.3					53	3
		Over Earlier Years ▶			13.6	36.6	59.5	53.1	23	3
	Number of Judgeships		5	5	5	5	4	4		
	Vacant Judgeship Months		.0	.0	3.6	7.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	465	446	409	340	364	379	30	4
		Civil	436	413	387	313	313	325	23	4
		Criminal	29	33	22	27	51	54	70	6
	Pending Cases		426	407	390	347	380	361	42	5
	Weighted Filings		391	390	323	338	365	398	44	6
	Terminations		434	429	365	298	345	352	30	3
	Trials Completed		36	35	33	29	40	49	59	4
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	5.0	4.1	4.4	3.6	3.7	4.7	85	6
		Civil	6	6	7	8	9	8	8	2
	From Issue to Trial (Civil Only)		16	21	21	17	18	13	49	4
	Number (and %) of Civil Cases Over 3 Years Old		110 (5.3)	91 (4.7)	106 (5.6)	88 (5.3)	81 (5.6)	56 (4.1)		
TRIALS	TOTAL		180	175	166	144	159	196		
	10 - 19 Days		1	4	8	7	1	2		
	20 Days and Over		1	3	4	-	1	1		
OTHER	Number of Defendants Filed		216	244	210	197	275	293		
	Number of Diversity Cases Filed		597	642	517	512	431	499		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 2

INDIANA SOUTHERN



ANALYSES

Additional Judgeships Requested: By District 1 Recommended By Circuit Council 1

In 1981 filings increased 4.3 percent to 465 per judgeship. Weighted filings were significantly lower at 391 per judgeship due to the large number of student loan cases filed in 1981 which have a very low case weight. The district ranks 42nd in the number of pending cases per judgeship.

The Seventh Circuit Judicial Council has approved the district's request for one additional judgeship on the basis of the steady increase in filings. While the raw filings per judgeship are high, approximately 115 of the 465 per judgeship filings are student loan cases and cases involving overpayments of VA benefits. In view of this factor the Subcommittee does not feel that the current workload is excessive for a five judge district and, therefore, recommends no additional judgeships.

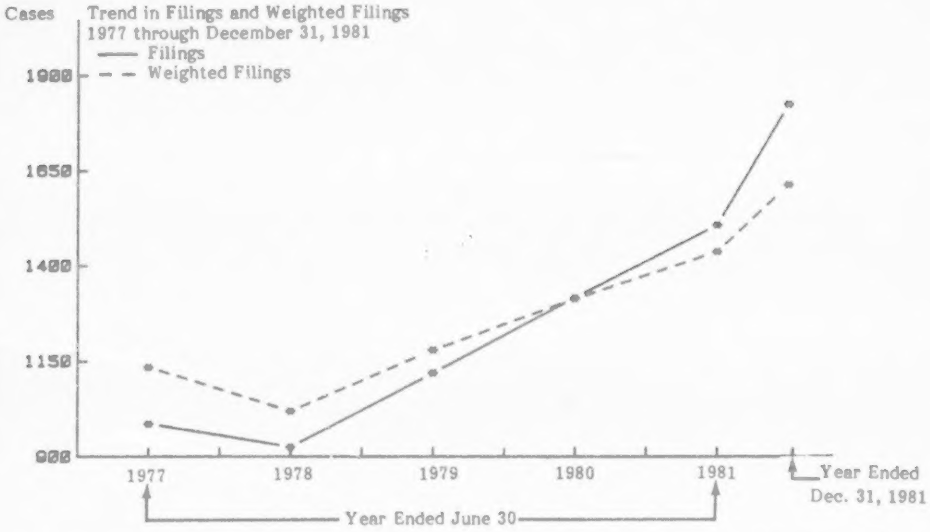
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 By Subcommittee in 1982 0 Total 0

WISCONSIN EASTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings		1,832	1,517	1,327	1,127	949	1,010		
	Terminations		1,514	1,348	1,357	1,136	882	1,157		
	Pending		1,454	1,314	1,144	1,178	1,187	1,120		
	Percent Change in Total Filings Current Year	Over June ▶		20.8					7	2
		Over Earlier Years ▶			38.1	62.6	93.0	81.4	6	1
	Number of Judgeships		4	4	4	4	3	3		
	Vacant Judgeship Months		.0	.0	6.3	7.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	458	379	332	282	316	337	35	5
		Civil	415	343	303	236	263	267	33	5
		Criminal	43	36	29	46	53	70	33	2
	Pending Cases		364	329	286	295	396	373	57	6
	Weighted Filings		396	359	329	296	340	378	40	4
	Terminations		379	337	339	284	294	386	52	5
	Trials Completed		28	34	21	25	26	29	79	6
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.5	3.4	3.7	4.0	4.0	5.2	31	3
		Civil	4	7	7	11	11	12	1	1
	From Issue to Trial (Civil Only)		19	19	27	26	35	30	67	6
	Number (and %) of Civil Cases Over 3 Years Old		61 (4.5)	90 (6.4)	85 (7.8)	103 (9.3)	110 (9.9)	109 (10.6)		
TRIALS	TOTAL		113	135	82	99	77	86		
	10 - 19 Days		5	2	3	5	4	4		
	20 Days and Over		2	2	1	1	3	2		
OTHER	Number of Defendants Filed		228	165	146	204	165	280		
	Number of Diversity Cases Filed		245	233	207	172	159	132		
MDL	Dockets		NA	1	1	1	1	2		
	Cases Pending		NA	5	5	5	5	5		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Filings in this district had been rising at a steady pace since 1978 but in calendar year 1981 the pace quickened. Current filings per judgeship are 458, almost 21 percent more than during the year ended June 30, 1981. Most of the increase, however, was in U. S. government suits to recover defaulted student loans and overpayments of VA benefits. As a result, weighted filings in the district were substantially lower at 396 per judgeship. The pending caseload grew 10.7 percent to 364 cases per judgeship, 57th among all district courts.

Wisconsin, Eastern has requested no additional judgeships, the Seventh Circuit Judicial Council has recommended none and the Subcommittee recommends none.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

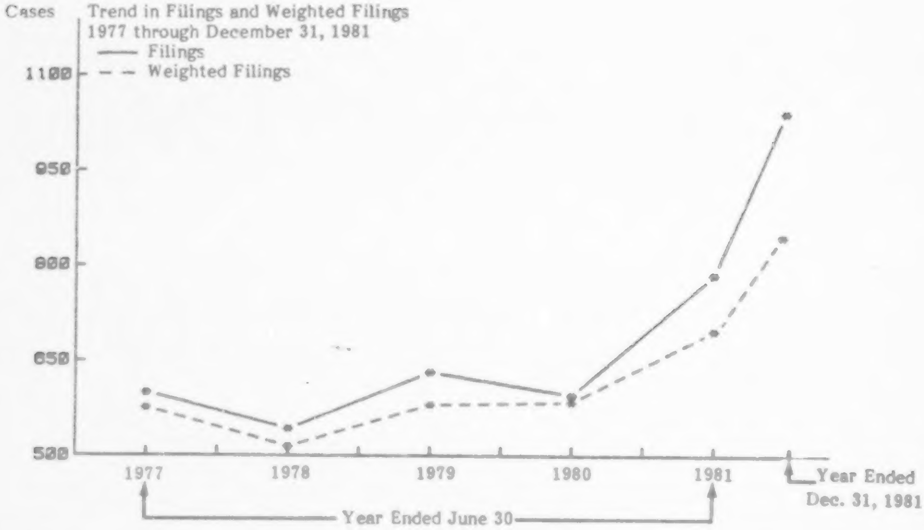
WISCONSIN WESTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						[illegible]	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		1,048	792	600	644	547	609		
	Terminations		773	740	599	545	608	710		
	Pending		1,115	921	869	869	770	831		
	Percent Change in Total Filings Current Year	Over June ▶ / Over Earlier Years ▶		32.3	74.7	62.7	91.6	72.1	3 9	1 2
Number of Judgeships			2	2	2	2	1	1		
Vacant Judgeship Months			12.0	11.7	4.9	7.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	524	396	300	322	547	609	15	2
		Civil	486	358	264	283	488	519	14	2
		Criminal	38	38	36	39	59	90	48	4
	Pending Cases		558	451	435	435	770	831	17	2
	Weighted Filings		428	348	292	291	515	576	33	3
	Terminations		387	370	300	273	608	710	45	4
	Trials Completed		33	29	37	30	59	47	66	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.5	4.1	4.0	3.1	3.4	3.5	76	5
		Civil	8	10	12	8	10	8	42	6
	From Issue to Trial (Civil Only)		-	-	-	-	-	-	-	-
	Number (and %) of Civil Cases Over 3 Years Old		81 (7.5)	89 (10.2)	118 (14.8)	145 (18.7)	114 (15.8)	95 (13.2)		
TRIALS	TOTAL		66	54	74	59	59	47		
	10 - 19 Days		3	3	-	3	-	-		
	20 Days and Over		-	-	-	-	1	-		
OTHER	Number of Defendants Filed		85	92	95	91	68	90		
	Number of Diversity Cases Filed		139	110	97	95	62	72		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.

WISCONSIN WESTERN



ANALYSIS

Additional Judgeships Requested: By District 0 Recommended By Circuit Council 0

Overall filings rose 32.3 percent during calendar year 1981. This increase was due, in large part, to substantial increases in cases involving defaulted student loans, prisoner petitions alleging violations of civil rights, and real property actions. These case types are weighted below average in the weighted caseload system and are primarily responsible for weighted filings (428 per judgeship) which are substantially below raw filings.

The pending caseload has grown to 558 cases per judgeship primarily because one of this district's two authorized judgeships has been vacant for part of the last two years. Once this vacancy is filled, the backlog should begin to decline. This court requested no additional judgeships and, the Seventh Circuit Judicial Council recommended none during the current survey. The Subcommittee recommends no additional judgeships.

Additional Judgeships Recommended:
By Judicial Conference in 1980 - By Subcommittee in 1982 0 Total 0

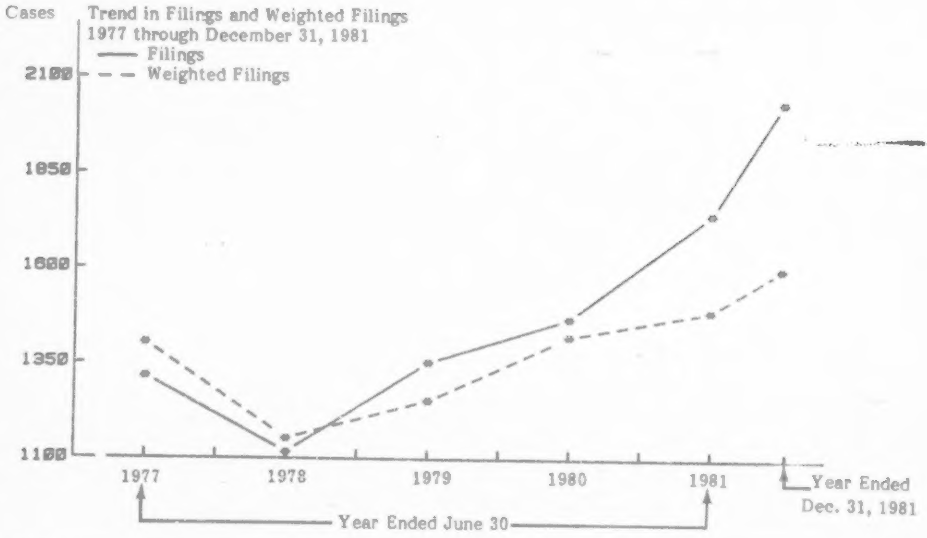
EIGHTH CIRCUIT
United States District Courts

ARKANSAS EASTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		2,043	1,748	1,475	1,370	1,134	1,325		
	Terminations		1,875	1,547	1,690	1,386	1,012	1,031		
	Pending		1,861	1,775	1,574	1,793	1,909	1,687		
	Percent Change in Total Filings Current Year	Over June ▶		16.9					14	4
		Over Earlier Years ▶			38.5	49.1	80.2	54.2	22	4
	Number of Judgeships		4	4	4	4	2	2		
	Vacant Judgeship Months		.0	2.0	10.0	14.5	.2	6.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	511	437	369	343	567	663	18	1
		Civil	473	402	327	292	444	538	19	2
		Criminal	38	35	42	51	123	125	49	4
	Pending Cases		465	444	394	448	905	844	29	1
	Weighted Filings		383	372	355	314	577	701	50	2
	Terminations		469	387	423	347	506	516	19	2
	Trials Completed		62	50	74	56	96	85	9	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.9	3.0	2.5	2.4	2.2	2.4	15	2
		Civil	6	10	14	16	16	14	8	2
	From Issue to Trial (Civil Only)		15	15	21	27	25	19	42	4
	Number (and %) of Civil Cases Over 3 Years Old		102 (5.8)	113 (6.6)	148 (10.0)	177 (10.4)	188 (11.2)	124 (7.9)		
TRIALS	TOTAL		249	237	293	224	192	169		
	10 - 19 Days		4	3	2	1	2	1		
	20 Days and Over		1	-	-	-	-	-		
OTHER	Number of Defendants Filed		202	177	211	257	271	320		
	Number of Diversity Cases Filed		352	361	322	289	223	242		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 2 **Recommended By Circuit Council** 1

Total filings per judgeship in this district rose to 511 in calendar year 1981 from a level of 437 during the year ended June 30, 1981. The current weighted filings level of 383 is slightly above the figure recorded during the year ended June 30, 1981, but substantially below raw filings. This occurred because of an appreciable increase in the filing of relatively low weighted civil cases involving social security, defaulted student loans and recovery of overpayments of VA educational benefits.

The four authorized judgeships in this district consist of three judges assigned only to the Eastern District of Arkansas and two judgeships authorized to serve both the Eastern and Western Districts of Arkansas. Based on the comments received from both the Eastern and Western Districts of Arkansas, it is apparent that the two roving judges spend the large majority of their time on the caseload for the Eastern District. The Judicial Council has noted that each of the five judges operating full time in the Eastern District took an assignment of 40 cases from the Western District last year and, therefore, the district's caseload statistics should be adjusted upward by 200 cases. If adjustments are made in the number of judgeships and the number of case assignments, the per judgeship workload figures for the Eastern District would be as follows: 449 filings; 346 weighted filings, and 372 pending cases.

The district originally requested that two additional judgeships be created; the Eighth Circuit Judicial Council recommended one. The Subcommittee does not agree. Whether the evaluation is made on the basis of the adjusted statistics noted above or those in the statistical profile the workload is not sufficient to justify the creation of additional judgeships. Therefore, the Subcommittee recommends no additional judgeships.

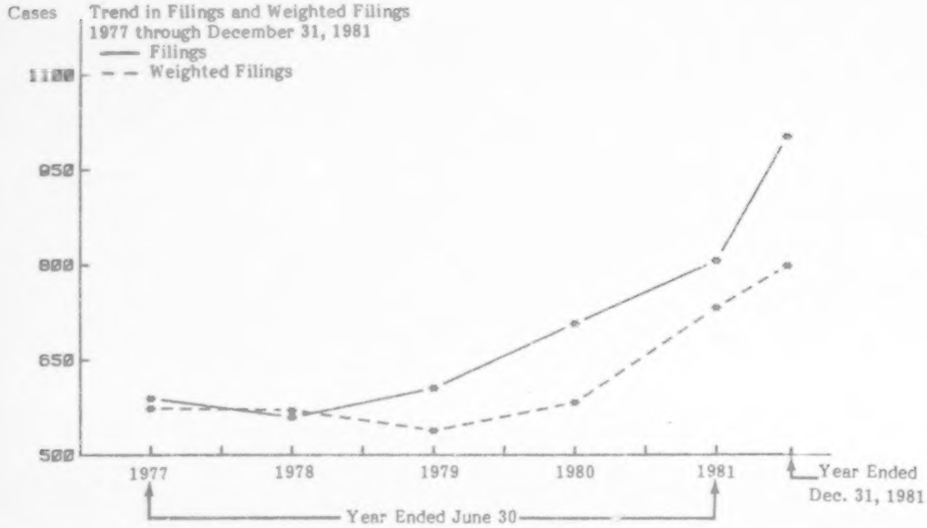
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

ARKANSAS WESTERN

1982 BIENNIAL JUDGESHIP SURVE
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		1,004	837	709	610	566	596		
	Terminations		943	766	717	568	540	480		
	Pending		916	910	868	876	834	808		
	Percent Change in Total Filings Current Year	Over June ▶		24.4					6	2
		Over Earlier Years ▶			41.6	64.6	77.4	69.5	11	1
	Number of Judgeships		2	2	2	2	2	2		
	Vacant Judgeship Months		.0	2.0	1.9	.0	5.3	6.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	502	404	355	305	283	298	22	2
		Civil	481	375	323	268	239	264	17	1
		Criminal	21	29	32	37	44	34	89	10
	Pending Cases		458	455	434	438	417	406	32	2
	Weighted Filings		383	356	292	280	286	288	50	2
	Terminations		472	393	359	284	270	240	17	1
	Trials Completed		41	39	34	34	36	36	42	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.4	3.6	3.5	4.5	3.2	3.6	65	7
		Civil	7	14	12	15	13	15	24	4
	From Issue to Trial (Civil Only)		18	15	21	17	13	19	60	5
	Number (and %) of Civil Cases Over 3 Years Old		55 (6.4)	59 (6.8)	111 (13.5)	95 (11.6)	53 (6.9)	19 (2.4)		
TRIALS	TOTAL		81	78	68	68	72	72		
	10 - 19 Days		2	1	-	-	1	2		
	20 Days and Over		-	-	-	-	-	-		
OTHER	Number of Defendants Filed		53	69	85	98	123	94		
	Number of Diversity Cases Filed		297	278	246	217	215	227		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1T Recommended By Circuit Council 1T

The filings in the Western District of Arkansas have risen substantially since 1979 and now total 502 per authorized judgeship. Weighted filings were lower at 383 indicating a mix of cases which is less difficult than the average. Much of the increase was because of the government's efforts to recover defaulted student loans and overpayments of VA educational benefits. While the district has managed to increase the case termination rates substantially since 1979, it has not been able to reduce the pending backlog. Pending cases on December 31, 1981 stood at 458 per judgeship.

The two authorized judgeships in this district consist of one judgeship authorized solely for the Western District of Arkansas and two judgeships which are authorized for both the Eastern and Western Districts. Comments received from both the Eastern and Western Districts indicate that the two roving judges spend the large majority of their time on the caseload of the Eastern District. This is supported by data for the most recent seven months which shows that of the 578 civil cases filed in the district, the roving judges were assigned a total of only 25 cases. The one active judge of the district and the two senior judges were assigned the remaining 553 cases. Therefore, the number of judgeships serving the Western District of Arkansas is considerably less than the two indicated on the statistical profile and as a result, the caseload figures are understated.

In 1980, the Judicial Conference recommended that an additional temporary judgeship be authorized for the Western District of Arkansas. This recommendation was based primarily on the growth in the pending caseload and the hope that a temporary judgeship would assist the district in curbing the tremendous rise in the pending backlog. Even if 200 cases handled by judges from the Eastern District are removed from the pending caseload, there are still over 700 pending cases for the one active and two senior judges to deal with. It is apparent from more recent statistics that the district has not been able to slow the growth of the pending caseload and that the temporary judgeship, previously recommended by the Judicial Conference, is still justified. The Subcommittee recommends the one temporary judgeship previously recommended by the Judicial Conference.

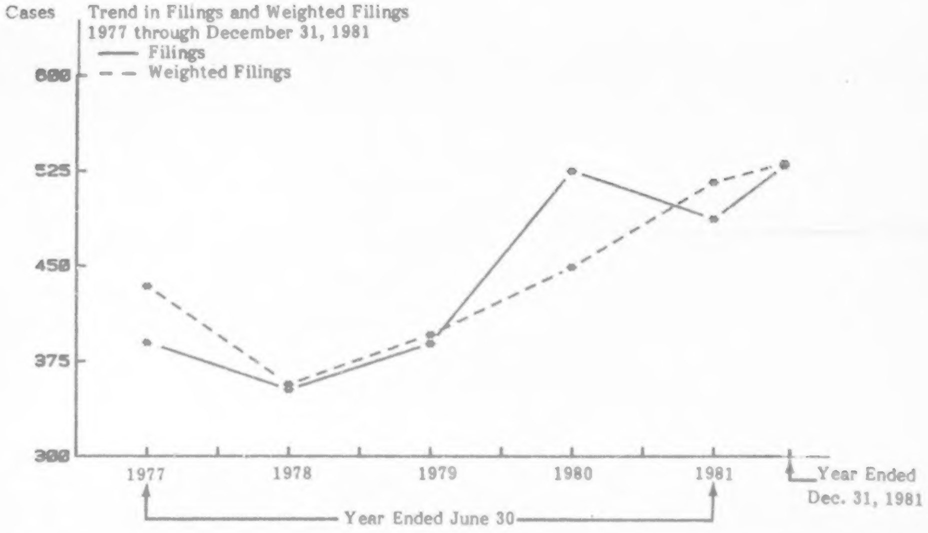
Additional Judgeships Recommended:
By Judicial Conference in 1980 1T By Subcommittee in 1982 0 Total 1T

IOWA NORTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		531	498	528	390	358	397		
	Terminations		451	406	489	394	382	359		
	Pending		455	419	337	299	303	327		
	Percent Change in Total Filings Current Year	Over June ▶		8.8					33	6
		Over Earlier Years ▶			.6	36.2	49.3	33.8	48	6
	Number of Judgeships		1.5	1.5	1.5	1.5	1.5	1.5		
	Vacant Judgeship Months		.0	.0	.0	2.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	354	325	352	260	239	265	73	7
		Civil	316	289	319	233	195	175	72	7
		Criminal	38	36	33	27	41	90	48	4
	Pending Cases		303	279	225	199	202	218	75	8
	Weighted Filings		349	344	299	264	238	289	62	6
	Terminations		301	271	326	263	255	239	81	8
	Trials Completed		29	23	33	20	25	38	74	6
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.7	3.2	3.2	3.1	3.0	2.4	40	4
		Civil	8	8	6	9	9	11	42	5
	From Issue to Trial (Civil Only)		-	-	16	-	-	19	-	-
	Number (and %) of Civil Cases Over 3 Years Old		3 (.7)	4 (1.0)	4 (1.2)	5 (1.7)	8 (2.9)	7 (2.5)		
TRIALS	TOTAL		43	35	49	30	37	57		
	10 - 19 Days		1	-	1	2	-	2		
	20 Days and Over		-	-	1	-	-	2		
OTHER	Number of Defendants Filed		91	81	76	61	77	204		
	Number of Diversity Cases Filed		162	149	111	95	101	96		
MDL	Dockets		NA	1	1	-	-	-		
	Cases Pending		NA	4	4	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

During calendar year 1981, total filings per judgeship rose to [illegible] compared to the 325 recorded during the year ended June 30, 1981. Weighted filings grew [illegible]49 per judgeship, only slightly below raw filings. The pending backlog now numbers 303 cases per judgeship which represents a substantial increase over earlier years but is still among the lowest one-fourth of all district courts.

The district and Judicial Council have not recommended additional judgeships during the current survey, and the Subcommittee agrees that no additional judgeships are required.

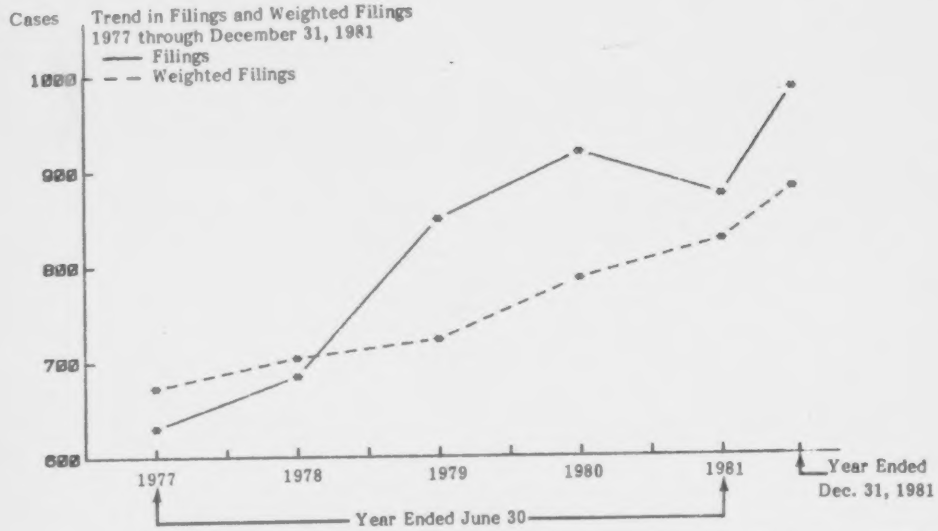
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

IOWA SOUTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings		988	874	923	854	683	632		
	Terminations		879	808	977	743	538	584		
	Pending		1,025	923	857	914	903	658		
	Percent Change in Total Filings Current Year	Over June ▶		13.0					22	5
		Over Earlier Years ▶			7.0	15.7	44.7	56.3	19	3
Number of Judgeships			2.5	2.5	2.5	2.5	1.5	1.5		
Vacant Judgeship Months			.0	.0	.0	8.4	10.5	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	395	350	369	342	455	421	59	5
		Civil	356	308	340	277	369	360	59	5
		Criminal	39	42	29	65	86	61	44	3
	Pending Cases		410	369	343	366	535	439	47	3
	Weighted Filings		347	331	315	289	469	449	64	7
	Terminations		352	323	391	297	359	389	63	5
	Trials Completed		50	52	34	28	47	47	21	4
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.8	3.5	4.2	4.2	2.4	3.2	47	6
		Civil	11	11	8	9	12	11	72	8
	From Issue to Trial (Civil Only)		11	16	12	-	-	22	17	2
	Number (and %) of Civil Cases Over 3 Years Old		39 (4.0)	40 (4.5)	56 (6.9)	62 (7.4)	42 (5.8)	25 (4.0)		
TRIALS	TOTAL		126	129	86	70	70	70		
	10 - 19 Days		-	1	3	1	-	3		
	20 Days and Over		1	1	-	-	1	1		
OTHER	Number of Defendants Filed		131	146	99	180	133	106		
	Number of Diversity Cases Filed		253	251	178	140	143	140		
MDL	Dockets		NA	1	1	-	1	1		
	Cases Pending		NA	3	3	-	2	2		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Total filings in calendar year 1981 rose substantially over filings during the year ended June 30, 1981. Filings now total 395 per authorized judgeship with weighted filings lower at 347. After a reduction in the pending caseload in 1980, the district has experienced a sizable increase. The number of cases pending on December 31, 1981 was 410 per judgeship.

The district and Judicial Council have not requested additional judgeships for this court and the Subcommittee agrees that no additional judgeships are required.

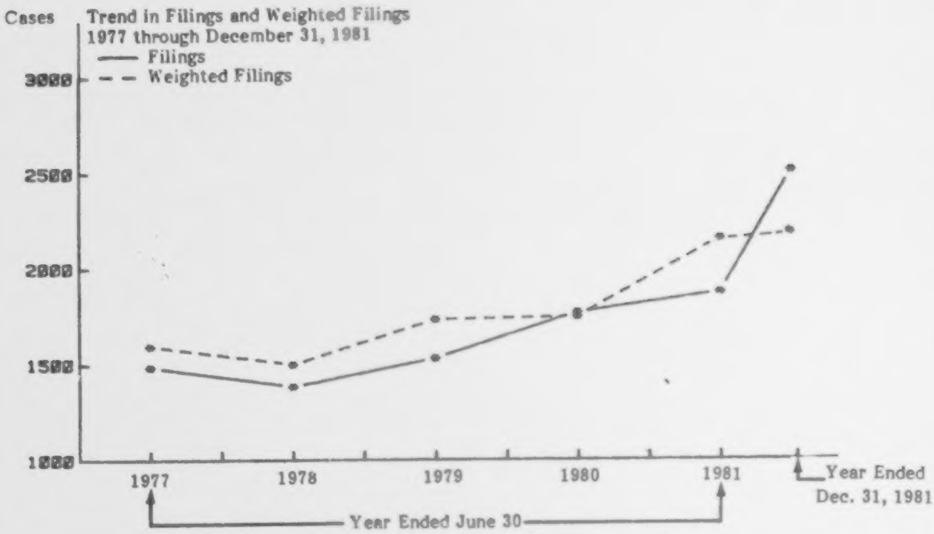
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

MINNESOTA

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN [illegible]	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		2,517	1,886	1,786	1,546	1,401	1,506		
	Terminations		2,357	1,806	1,571	1,537	1,370	1,539		
	Pending		2,138	2,034	2,004	1,793	1,784	1,753		
	Percent Change in Total Filings Current Year	Over June ▶		33.5					2	1
		Over Earlier Years ▶			40.9	62.8	79.7	67.1	12	2
Number of Judgeships			6	6	6	6	4	4		
Vacant Judgeship Months			6.5	2.0	15.8	15.4	2.9	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	420	314	298	258	350	377	50	4
		Civil	384	273	266	221	285	303	44	4
		Criminal	36	41	32	37	65	74	56	7
	Pending Cases		356	347	334	299	446	438	61	6
	Weighted Filings		368	359	291	289	375	399	56	5
	Terminations		393	331	262	256	343	385	43	3
	Trials Completed		25	28	26	21	42	45	85	10
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.5	4.1	3.7	4.0	3.3	4.0	76	10
		Civil	9	11	11	10	12	12	60	6
	From Issue to Trial (Civil Only)		21	21	25	25	18	16	70	6
	Number (and %) of Civil Cases Over 3 Years Old		101 (5.0)	142 (7.3)	195 (10.4)	195 (11.7)	169 (10.3)	141 (8.6)		
TRIALS	TOTAL		156	166	155	126	167	180		
	10 - 19 Days		11	11	6	3	7	5		
	20 Days and Over		6	4	1	3	1	-		
OTHER	Number of Defendants Filed		294	330	267	310	355	398		
	Number of Diversity Cases Filed		552	559	391	337	289	385		
MDL	Dockets		NA	2	1	1	3	3		
	Cases Pending		NA	9	8	7	8	57		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District T/P **Recommended By Circuit Council** T/P

This district is currently authorized five permanent judgeships and one temporary judgeship. The district and Judicial Council have requested that the temporary judgeship be made permanent.

Filings in the district in calendar year 1981 were more than 30 percent above the number of cases filed during the year ended June 30, 1981. This resulted primarily from a substantial increase in cases involving defaulted student loans and VA educational benefits. Raw filings now stand at 420 per judgeship with weighted filings somewhat lower at 368 per judgeship.

If this district were to lose the one temporary judgeship currently authorized, calendar year 1981 filings for five authorized judgeships would be 503 with student loan and VA cases included and 339 with them excluded. Weighted filings would be 442 with only five judgeships and the pending caseload would increase to 428. These numbers would appear to be sufficient to justify the district and Judicial Council requests that the temporary judgeship be made permanent.

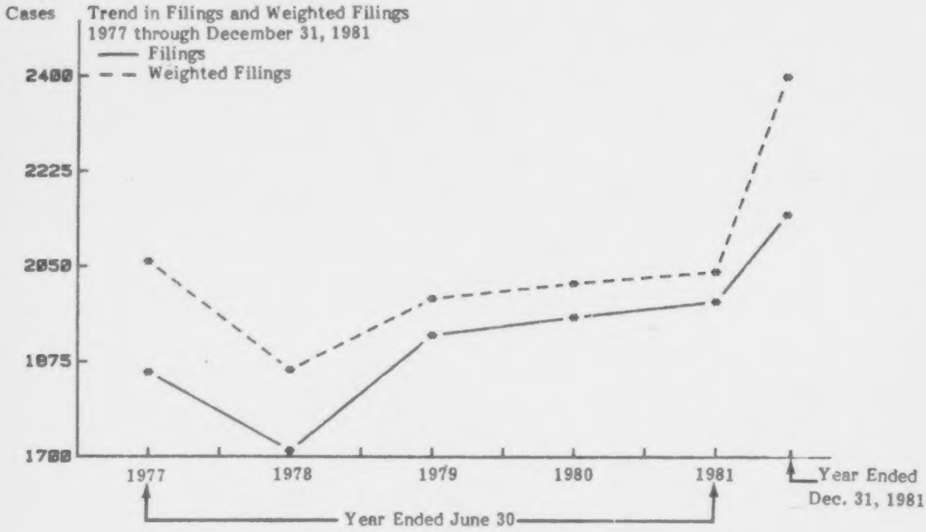
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** T/P **Total** T/P

MISSOURI EASTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
		December 31	June 30					U.S.	CIRCUIT
		1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings	2,151	1,991	1,964	1,932	1,724	1,866		
	Terminations	1,893	1,893	1,971	1,800	1,603	1,747		
	Pending	1,585	1,413	1,315	1,323	1,191	1,070		
	Percent Change in Total Filings Current Year	Over June ▶	8.0					39	8
		Over Earlier Years ▶		9.5	11.3	24.8	15.3	75	9
	Number of Judgeships	5	5	5	5	4	4		
	Vacant Judgeship Months	4.4	5.2	12.5	7.7	1.8	4.6		
ACTIONS PER JUDGESHIP	FILINGS Total	430	398	393	386	431	466	45	3
	FILINGS Civil	392	366	360	350	374	384	41	3
	FILINGS Criminal	38	32	33	36	57	82	48	4
	Pending Cases	317	293	263	265	298	268	68	7
	Weighted Filings	477	438	404	399	465	515	19	1
	Terminations	379	379	394	360	401	437	52	4
	Trials Completed	58	56	61	55	69	62	11	2
MEDIAN TIMES (MONTHS)	From Filing to Disposition Criminal	2.8	2.9	2.7	2.7	1.9	2.7	9	1
	From Filing to Disposition Civil	6	7	6	6	6	6	8	2
	From Issue to Trial (Civil Only)	8	10	9	9	8	6	5	1
	Number (and %) of Civil Cases Over 3 Years Old	28 (1.9)	15 (1.1)	23 (1.9)	26 (2.1)	14 (1.3)	13 (1.4)		
TRIALS	TOTAL	289	282	306	273	277	246		
	10 - 19 Days	4	2	4	2	6	1		
	20 Days and Over	-	-	2	-	1	-		
OTHER	Number of Defendants Filed	238	240	217	227	268	425		
	Number of Diversity Cases Filed	723	638	610	537	494	530		
MDL	Dockets	NA	2	1	1	2	2		
	Cases Pending	NA	7	6	6	15	11		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 1

In calendar year 1981, total filings numbered 430 per judgeship, with weighted filings substantially higher at 477. Over the last several years, the district has managed to terminate cases at a rate which is almost equivalent to the rate of incoming filings. As a result, the pending backlog had not exceeded 300 per judgeship until December 31, 1981. The district's median times from filing to disposition of civil and criminal cases are among the best in the country and the number of civil cases which are over three years old represents only 1.9 percent of the pending caseload.

In 1980, the Judicial Conference recommended that one additional judgeship be created for this district based on the level of filings and weighted filings. Since that time, both raw and weighted filings have increased. With six judgeships, caseload figures would be 359 filings, 398 weighted filings, and 264 pending cases per judgeship. Therefore, the Subcommittee, again, recommends the one additional judgeship previously approved by the Judicial Conference.

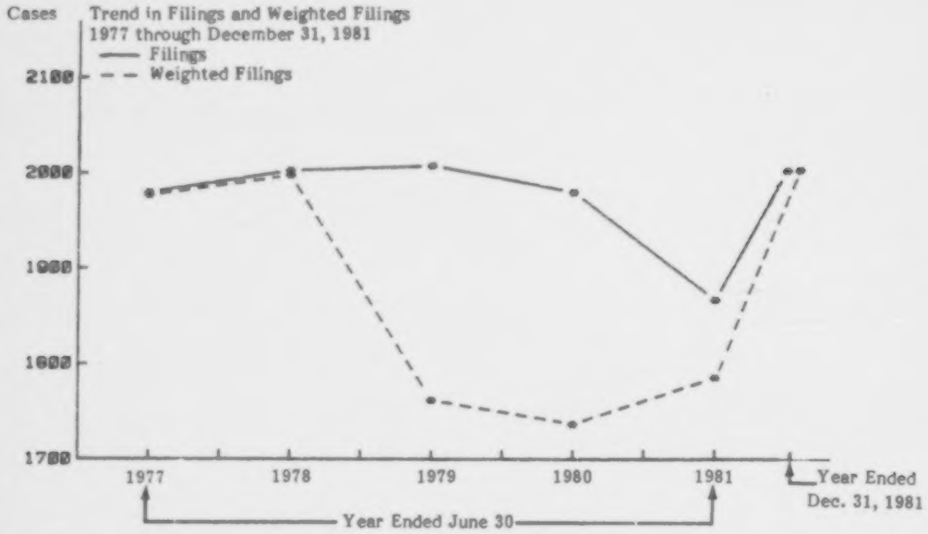
Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 0 **Total** 1

MISSOURI WESTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN [illegible]	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		2,009	1,877	1,993	2,030	2,019	1,993		
	Terminations		1,841	1,758	2,055	1,827	1,951	1,797		
	Pending		2,274	2,078	1,968	2,036	1,532	1,764		
	Percent Change in Total Filings Current Year	Over June ▶		7.0					43	9
		Over Earlier Years ▶			.8	-1.0	-.5	.8	84	10
	Number of Judgeships		6	6	6	6	4	4		
	Vacant Judgeship Months		22.2	19.0	6.4	15.4	.7	4.7		
ACTIONS PER JUDGESHIP	FILINGS	Total	335	313	332	338	505	498	77	8
		Civil	306	284	301	301	438	440	75	8
		Criminal	29	29	31	37	67	58	70	8
	Pending Cases		379	346	328	339	458	441	54	5
	Weighted Filings		334	278	290	294	500	494	70	8
	Terminations		307	295	343	305	488	449	80	7
	Trials Completed		28	27	36	21	40	31	79	9
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.7	4.0	3.4	2.9	2.5	3.5	40	4
		Civil	11	9	9	6	10	9	72	8
	From Issue to Trial (Civil Only)		26	31	30	22	19	18	78	7
	Number (and %) of Civil Cases Over 3 Years Old		171 (8.3)	144 (7.7)	171 (10.2)	213 (12.7)	140 (9.4)	84 (5.7)		
TRIALS	TOTAL		171	162	218	128	158	122		
	10 - 19 Days		2	2	2	3	1	1		
	20 Days and Over		2	3	-	1	-	-		
OTHER	Number of Defendants Filed		245	237	286	299	325	300		
	Number of Diversity Cases Filed		342	315	303	304	254	296		
MDL	Dockets		NA	4	5	5	5	6		
	Cases Pending		NA	52	63	55	35	38		

NA – This information is compiled only for the year ended June 30.



ANALYSES

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Filings per judgeship in calendar year 1981 numbered 335 while weighted filings were almost identical at 334. The district's termination record of only 307 cases per authorized judgeship reflects the 22 vacant judgeship months in 1981. This lower termination rate resulted in a slight increase in the pending caseload which at the end of the year stood at 379 per judgeship.

The district and Judicial Council have not requested additional judgeships during the current survey and the Subcommittee agrees that the number of judgeships presently authorized is sufficient to handle the current workload.

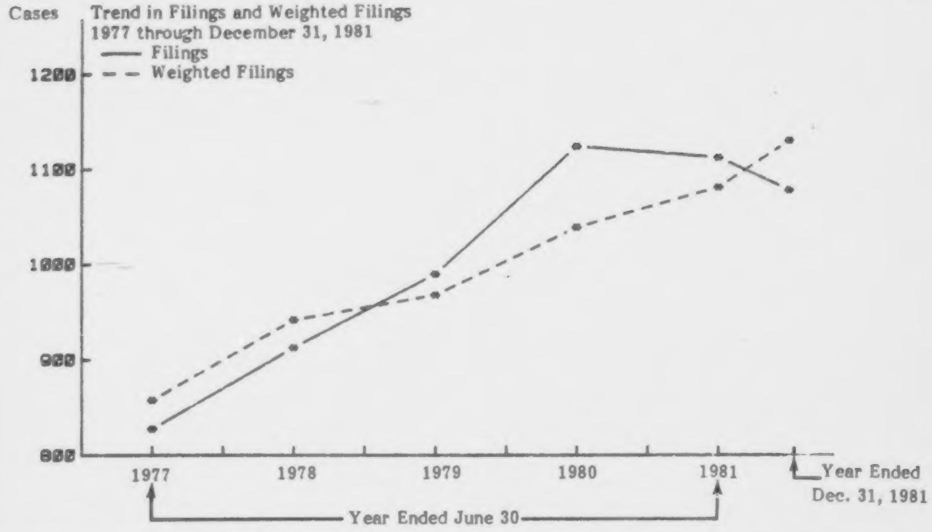
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

NEBRASKA

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings		1,087	1,117	1,144	997	921	844		
	Terminations		1,002	992	1,086	879	842	920		
	Pending		1,152	1,147	1,022	967	849	770		
	Percent Change in Total Filings Current Year	Over June ▶		-2.7					80	10
		Over Earlier Years ▶			-5.0	9.0	18.0	28.8	55	7
	Number of Judgeships		3	3	3	3	3	3		
	Vacant Judgeship Months		8.5	2.5	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	362	372	381	332	307	281	69	6
		Civil	338	345	344	292	263	233	66	6
		Criminal	24	27	37	40	44	48	82	9
	Pending Cases		384	382	341	322	283	257	51	4
	Weighted Filings		370	360	346	323	314	286	55	4
	Terminations		334	331	362	293	281	307	70	6
	Trials Completed		57	49	36	40	43	45	13	3
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.4	4.7	4.8	3.8	3.6	4.8	66	7
		Civil	11	10	7	10	11	12	72	8
	From Issue to Trial (Civil Only)		14	15	15	12	12	15	36	3
	Number (and %) of Civil Cases Over 3 Years Old		53 (4.8)	40 (3.7)	21 (2.2)	15 (1.7)	14 (1.8)	14 (2.0)		
TRIALS	TOTAL		171	146	108	120	129	134		
	10 - 19 Days		3	3	3	3	5	2		
	20 Days and Over		–	–	–	–	–	1		
OTHER	Number of Defendants Filed		109	124	176	161	170	199		
	Number of Diversity Cases Filed		278	283	212	271	248	233		
MDL	Dockets		NA	–	–	–	–	–		
	Cases Pending		NA	–	–	–	–	–		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 0

Case filings in calendar year 1981, were 2.7 percent below the number filed during the year ended June 30, 1981. This resulted in per judgeship filings of 362 compared with 372 for the June 30 period. Weighted filings, on the other hand, increased slightly from 360 to 370 per judgeship.

The pending caseload in this district has continued to rise since 1977. That year the pending backlog was 257 per judgeship and it now stands at 384. The court has requested that one additional judgeship be authorized for this district. However, the Judicial Council for the Eighth Circuit does not support the request. The Subcommittee does not feel that the current workload levels are sufficient to justify creation of an additional judgeship and, therefore, recommends none.

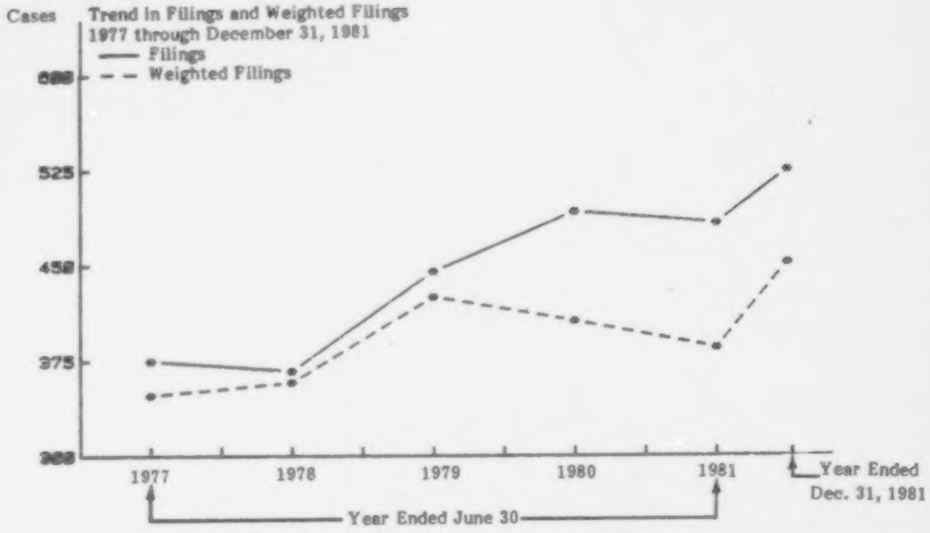
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

NORTH DAKOTA

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings	528	496	493	450	372	379		
	Terminations	433	443	511	413	354	325		
	Pending	393	341	296	314	277	259		
	Percent Change in Total Filings Current Year — Over June ▶		8.6					35	7
	Percent Change in Total Filings Current Year — Over Earlier Years ▶			7.1	17.3	41.9	39.3	43	5
Number of Judgeships		2	2	2	2	2	2		
Vacant Judgeship Months		.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS — Total	264	243	247	225	186	190	87	9
	FILINGS — Civil	214	194	211	174	134	120	88	9
	FILINGS — Criminal	50	49	36	51	52	70	25	2
	Pending Cases	197	171	148	157	139	130	97	10
	Weighted Filings	222	192	203	213	179	174	89	10
	Terminations	217	222	256	207	177	163	91	10
	Trials Completed	29	37	33	30	36	29	74	6
MEDIAN TIMES (MONTHS)	From Filing to Disposition — Criminal	3.4	3.1	3.2	2.6	2.0	2.5	27	3
	From Filing to Disposition — Civil	5	5	5	8	7	8	4	1
	From Issue to Trial (Civil Only)	-	11	10	12	14	-	-	-
	Number (and %) of Civil Cases Over 3 Years Old	8 (2.3)	4 (1.4)	8 (3.1)	5 (1.9)	5 (2.1)	9 (4.1)		
TRIALS	TOTAL	57	73	64	59	72	57		
	10 - 19 Days	5	4	-	-	3	1		
	20 Days and Over	-	-	-	-	-	1		
OTHER	Number of Defendants Filed	144	123	100	129	129	190		
	Number of Diversity Cases Filed	115	85	68	71	85	76		
MDL	Dockets	NA	-	-	-	-	-		
	Cases Pending	NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

The caseload in this district is now at its highest level ever. Even so, total filings per authorized judgeship are only 264 and weighted filings are 222. The pending caseload, while higher than ever before, is still only 197 cases per authorized judgeship which ranks 92nd among all district courts. All workload figures are among the lowest in the country and median disposition times are among the best nationwide. The district and Judicial Council have not requested additional judgeships during the current survey and the Subcommittee agrees that no additional judgeships are required.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

SOUTH DAKOTA

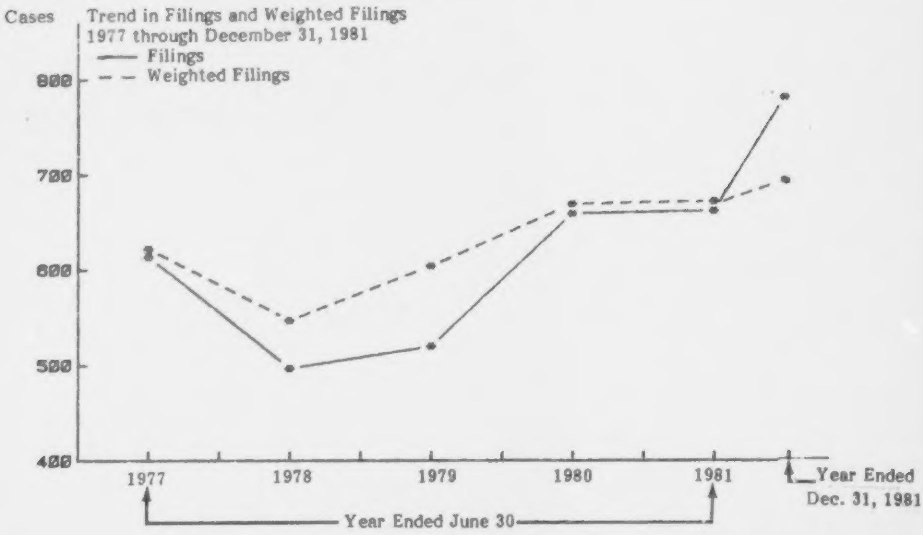
1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
		December 31	June 30					U.S.	CIRCUIT
		1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings	783	656	662	524	498	618		
	Terminations	683	599	639	443	522	648		
	Pending	722	676	609	588	507	530		
	Percent Change in Total Filings Current Year	Over June ▶	17.6					10	3
		Over Earlier Years ▶		18.3	49.4	57.2	26.7	59	8
	Number of Judgeships	3	3	3	3	2	2		
	Vacant Judgeship Months	11.0	12.0	.6	6.1	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS Total	261	222	221	175	249	309	88	10
	FILINGS Civil	194	153	162	123	150	136	92	10
	FILINGS Criminal	67	59	59	52	99	173	8	1
	Pending Cases	241	225	203	196	254	265	88	9
	Weighted Filings	231	224	223	202	274	310	88	9
	Terminations	228	230	213	148	261	324	89	9
	Trials Completed	29	35	48	32	52	45	74	6
MEDIAN TIMES (MONTHS)	From Filing to Disposition Criminal	4.4	4.8	5.2	6.2	5.2	6.2	66	7
	From Filing to Disposition Civil	10	12	9	14	15	12	66	7
	From Issue to Trial (Civil Only)	-	11	12	6	6	14	-	-
	Number (and %) of Civil Cases Over 3 Years Old	22 (3.4)	33 (5.6)	28 (5.3)	29 (5.7)	35 (8.8)	29 (8.0)		
TRIALS	TOTAL	88	106	145	96	104	89		
	10 - 19 Days	1	1	3	-	1	1		
	20 Days and Over	1	-	-	1	-	-		
OTHER	Number of Defendants Filed	217	219	216	186	219	410		
	Number of Diversity Cases Filed	138	140	151	129	108	99		
MDL	Dockets	NA	-	-	-	-	-		
	Cases Pending	NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 2

SOUTH DAKOTA



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Filings in this district have increased by nearly 50 percent since creation of the third authorized judgeship in late 1978. However, even with this increase, filings now total only 261 per judgeship which ranks 88th among all district courts. Weighted filings are also among the lowest in the country at 231 per judgeship. The pending backlog now numbers only 241 cases per judgeship.

The district and Judicial Council have not requested additional judgeships during the current survey and the Subcommittee agrees that no additional judgeships are required.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

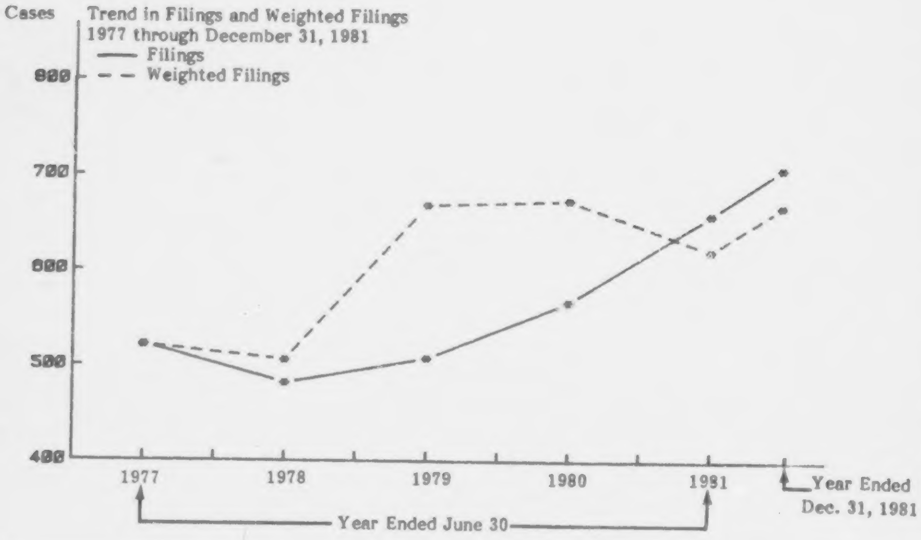
NINTH CIRCUIT
United States District Courts

ALASKA

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		712	656	572	513	485	526		
	Terminations		588	626	552	441	474	463		
	Pending		803	734	664	649	577	566		
	Percent Change in Total Filings Current Year	Over June ▶		6.9					44	8
		Over Earlier Years ▶			24.5	38.8	45.8	35.4	46	9
	Number of Judgeships		2	2	2	2	2	2		
	Vacant Judgeship Months		.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	356	333	286	257	243	263	71	9
		Civil	328	305	251	229	189	185	68	9
		Criminal	28	28	35	28	54	78	76	12
	Pending Cases		402	352	332	325	289	283	49	8
	Weighted Filings		329	311	337	335	253	260	71	9
	Terminations		294	313	276	221	237	232	84	12
	Trials Completed		17	18	18	24	40	33	92	13
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.1	3.4	3.4	4.2	4.1	4.3	20	2
		Civil	6	6	13	9	13	10	8	3
	From Issue to Trial (Civil Only)		-	-	-	-	-	-	-	-
	Number (and %) of Civil Cases Over 3 Years Old		54 (7.0)	46 (6.8)	49 (7.8)	55 (9.0)	48 (9.4)	35 (7.5)		
TRIALS	TOTAL		34	35	35	48	79	66		
	10 - 19 Days		1	1	-	-	1	2		
	20 Days and Over		-	-	1	-	1	1		
OTHER	Number of Defendants Filed		58	68	96	84	125	224		
	Number of Diversity Cases Filed		119	105	115	96	80	88		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 1

The number of cases filed in this district in 1981 was at its highest level ever. Total filings per authorized judgeship numbered 356 and weighted filings were slightly lower at 329 per judgeship. Despite a higher termination rate in the last three years, the district has not been able to maintain pace with filings and, as a result, the pending caseload has grown to its highest level at 402 cases per judgeship.

Ordinarily the caseload statistics would not appear to be sufficient to justify a request for an additional judgeship; however, there are unique geographical problems in this district. The judges in Alaska continue to face severe travel problems and harsh weather conditions, which restrict their ability to handle caseload volumes comparable to those handled by other district courts. When these problems are considered along with an ever increasing pending caseload, there is sufficient justification for the one additional judgeship approved by the Judicial Conference in 1980. The Subcommittee, therefore, recommends that the one additional judgeship again be recommended for this district court.

Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 0 **Total** 1

ARIZONA

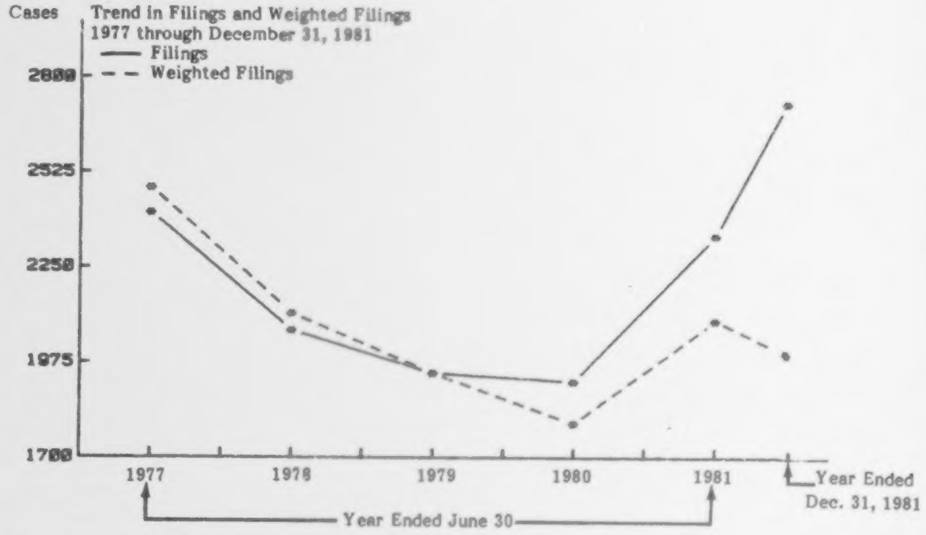
1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings		2,748	2,363	1,948	1,978	2,107	2,434		
	Terminations		2,714	2,279	2,192	1,881	2,102	2,131		
	Pending		2,449	2,431	2,344	2,589	2,488	2,485		
	Percent Change in Total Filings Current Year	Over June ▶		16.3					15	2
		Over Earlier Years ▶			41.1	38.9	30.4	12.9	78	13
	Number of Judgeships		8	8	8	8	5	5		
	Vacant Judgeship Months		.0	3.1	35.5	27.6	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	344	295	244	247	421	487	75	10
		Civil	285	226	182	170	263	266	80	10
		Criminal	59	69	62	77	158	221	14	7
	Pending Cases		306	304	293	324	498	497	73	14
	Weighted Filings		248	252	225	243	423	496	85	13
	Terminations		339	285	274	235	420	426	69	10
	Trials Completed		35	34	33	29	63	94	60	6
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.7	3.7	3.8	3.3	2.8	3.3	40	7
		Civil	6	10	9	9	8	7	8	3
	From Issue to Trial (Civil Only)		31	34	31	-	31	24	80	10
	Number (and %) of Civil Cases Over 3 Years Old		209 (11.7)	214 (12.[illegible])	278 (17.3)	282 (16.1)	264 (17.0)	200 (13.9)		
TRIALS	TOTAL		282	270	260	232	314	471		
	10 - 19 Days		4	5	7	3	3	3		
	20 Days and Over		3	3	2	-	1	1		
OTHER	Number of Defendants Filed		674	766	715	935	1,194	1,729		
	Number of Diversity Cases Filed		299	281	203	231	249	251		
MDL	Dockets		NA	1	2	2	2	1		
	Cases Pending		NA	37	38	37	32	7		

NA – This information is compiled only for the year ended June 30.

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 2

ARIZONA



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

While overall filings increased by more than 16 percent in 1981, raw filings per authorized judgeship remained relatively low at 344 which ranks 75th among the 95 district courts. Weighted filings per authorized judgeship were also among the lowest in the country at 248. Although the pending caseload rose slightly in 1981, at 306 per judgeship, it ranks 73rd among all district courts.

This district and Judicial Council have not requested additional judgeships in the current Biennial Survey and the Subcommittee recommends no additional judgeships.

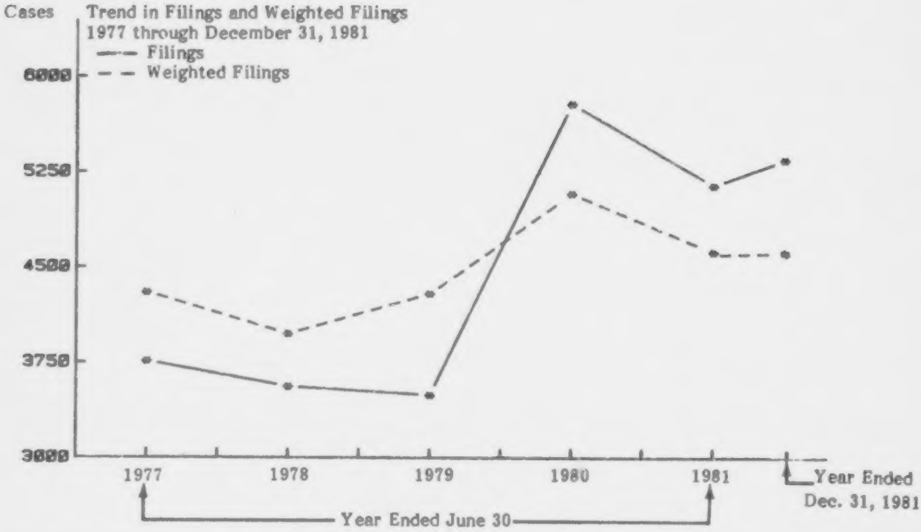
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

CALIFORNIA NORTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		5,370	5,170	5,829	3,541	3,603	3,930		
	Terminations		5,255	5,192	4,892	3,676	3,725	3,615		
	Pending		3,784	4,066	4,087	3,156	3,292	3,414		
	Percent Change in Total Filings Current Year	Over June ▶		3.9					56	9
		Over Earlier Years ▶			-7.9	51.7	49.0	40.2	39	8
	Number of Judgeships		12	12	12	12	11	11		
	Vacant Judgeship Months		12.0	12.5	31.1	7.7	.0	5.4		
ACTIONS PER JUDGESHIP	FILINGS	Total	448	431	486	295	328	348	39	5
		Civil	421	406	455	264	281	282	30	2
		Criminal	27	25	31	31	47	66	79	13
	Pending Cases		315	339	341	263	299	310	69	13
	Weighted Filings		385	395	423	357	361	391	46	6
	Terminations		438	433	408	306	339	329	28	2
	Trials Completed		22	22	30	27	38	31	89	12
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.8	3.9	3.5	4.4	3.8	3.4	47	9
		Civil	4	4	5	8	8	9	1	1
	From Issue to Trial (Civil Only)		15	17	14	12	15	15	42	4
	Number (and %) of Civil Cases Over 3 Years Old		189 (5.4)	230 (5.2)	316 (8.2)	330 (11.2)	284 (9.4)	230 (7.4)		
TRIALS	TOTAL		259	265	359	328	421	340		
	10 - 19 Days		15	17	14	18	18	17		
	20 Days and Over		12	11	12	7	7	3		
OTHER	Number of Defendants Filed		439	410	518	579	641	956		
	Number of Diversity Cases Filed		709	759	772	499	538	506		
MDL	Dockets		NA	5	8	10	10	12		
	Cases Pending		NA	30	138	175	174	178		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 Recommended By Circuit Council 0

This district saw a dramatic rise in case filings in 1980 when 2,300 more cases were filed than in the previous year. This increase occurred primarily because of a substantial rise in the number of cases filed involving defaulted student loans and overpayment of VA educational benefits. In 1981, total filings were 448 per authorized judgeship with weighted filings substantially lower at 385, reflecting the impact of low weighted student loan cases. The pending caseload in this district now stands at 315 per judgeship, 69th among all districts.

The district has requested no additional judgeships during the current survey, the Judicial Council approved none, and the Subcommittee recommends none.

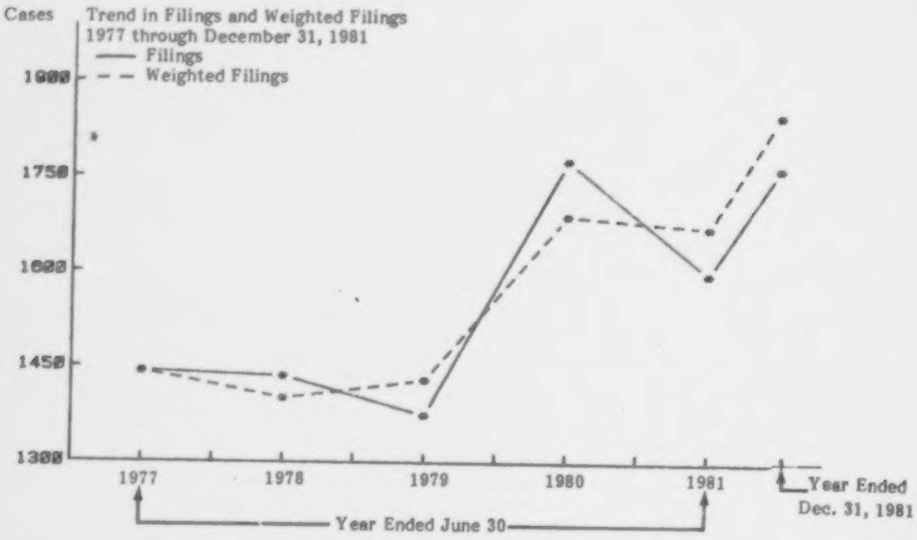
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 By Subcommittee in 1982 0 Total 0

CALIFORNIA EASTERN

1982 BIENNIAL JUDGESHIP SURVE
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		1,779	1,609	1,801	1,404	1,470	1,464		
	Terminations		1,536	1,518	1,480	1,541	1,429	1,390		
	Pending		2,249	2,019	1,927	1,615	1,752	1,711		
	Percent Change in Total Filings Current Year	Over June ▶		10.6					28	5
		Over Earlier Years ▶			-1.2	26.7	21.0	21.5	63	11
	Number of Judgeships		6	6	6	6	3	3		
	Vacant Judgeship Months		12.0	5.9	23.4	26.3	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	297	268	300	234	490	488	83	12
		Civil	234	216	246	182	323	310	85	12
		Criminal	63	52	54	52	167	178	9	4
	Pending Cases		375	337	321	269	584	570	55	10
	Weighted Filings		301	278	282	238	467	481	79	12
	Terminations		256	253	247	257	476	463	87	13
	Trials Completed		24	23	15	18	39	32	86	11
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.0	4.0	3.8	4.6	3.8	3.9	55	11
		Civil	12	11	8	12	15	12	81	13
	From Issue to Trial (Civil Only)		21	27	-	-	-	-	70	8
	Number (and %) of Civil Cases Over 3 Years Old		168 (8.7)	176 (10.1)	187 (11.1)	201 (14.9)	153 (11.2)	163 (11.9)		
TRIALS	TOTAL		143	139	92	105	118	97		
	10 - 19 Days		4	4	3	2	4	2		
	20 Days and Over		4	3	1	-	-	1		
OTHER	Number of Defendants Filed		619	527	437	413	579	693		
	Number of Diversity Cases Filed		205	194	193	163	128	138		
MDL	Dockets		NA	-	-	1	1	1		
	Cases Pending		NA	-	-	1	2	124		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Filings increased 10.6 percent in 1981. Total filings per authorized judgeship now number 297 which ranks 83rd among all district courts. Weighted filings are slightly higher at 301. The district and Judicial Council have requested no additional judgeships during the current survey, and the Subcommittee agrees that no additional judgeships are required.

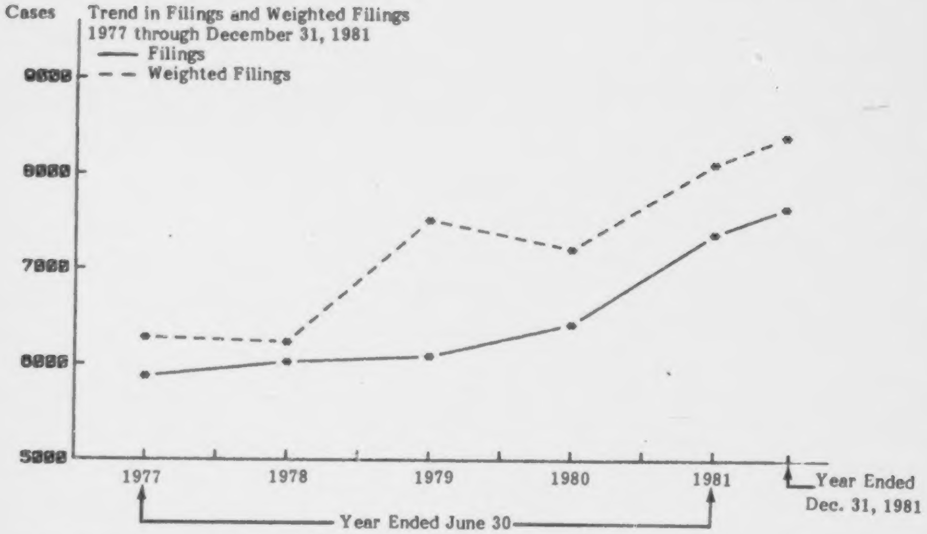
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

CALIFORNIA CENTRAL

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings	7,715	7,473	6,496	6,214	6,164	6,030		
	Terminations	7,426	7,140	6,042	6,548	6,048	5,987		
	Pending	5,876	5,819	5,485	5,042	5,373	5,253		
	Percent Change in Total Filings Current Year	Over June ▶	3.2					62	10
		Over Earlier Years ▶		18.8	24.2	25.2	27.9	57	10
	Number of Judgeships	17	17	17	17	16	16		
	Vacant Judgeship Months	34.0	34.1	41.6	12.9	5.8	.4		
ACTIONS PER JUDGESHIP	FILINGS Total	454	440	382	366	385	377	37	4
	FILINGS Civil	394	375	324	309	304	279	40	5
	FILINGS Criminal	60	55	58	58	81	98	11	5
	Pending Cases	346	342	323	297	336	328	65	12
	Weighted Filings	492	477	424	442	390	392	14	2
	Terminations	437	420	355	385	378	374	29	3
	Trials Completed	35	33	32	28	29	44	60	6
MEDIAN TIMES (MONTHS)	From Filing to Disposition Criminal	3.5	3.4	3.3	3.2	2.4	3.3	31	5
	From Filing to Disposition Civil	5	5	6	8	6	8	4	2
	From Issue to Trial (Civil Only)	14	15	10	12	11	13	36	2
	Number (and %) of Civil Cases Over 3 Years Old	325 (6.3)	325 (6.5)	368 (7.7)	417 (9.6)	575 (12.4)	417 (9.5)		
TRIALS	TOTAL	589	563	541	482	464	699		
	10 - 19 Days	32	29	15	16	14	18		
	20 Days and Over	6	5	10	3	7	7		
OTHER	Number of Defendants Filed	1,398	1,552	1,393	1,318	1,563	2,038		
	Number of Diversity Cases Filed	1,612	1,496	1,251	1,275	925	885		
MDL	Dockets	NA	9	10	9	14	13		
	Cases Pending	NA	95	111	146	346	404		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 4 **Recommended By Circuit Council** 4

The rise in filings in this district slowed in calendar year 1981 as 3.2 percent more cases were filed than during the year ended June 30, 1981. Per judgeship filings currently stand at 454 with weighted filings substantially higher at 492 per judgeship. The weighted filings per judgeship in this district ranked 14th among all U. S. district courts. The more difficult mix of cases, reflected in the high weighted filings, is composed of civil rights actions, labor law suits, and diversity contract actions. Each of these categories are weighted substantially above average in the weighted caseload system. The 1981 pending caseload of 346 per judgeship ranks 65th among the 95 district courts.

The district has requested that four additional judgeships be recommended, the two previously recommended by the Judicial Conference in 1980 plus two additional. If the two judgeships previously approved by the Conference were in place in 1981, filings would have been 406 per judgeship with weighted filings at 440. If the two additional judgeships requested by the district were approved, 1981 filings would be reduced to 367 with weighted filings at 398 per judgeship. The pending caseload would be reduced to approximately 280 with four additional judgeships.

It is apparent that the workload of this district is sufficient to justify a recommendation for three additional permanent judgeships. Increasing the number of judgeships in this district to 20 would result in filings of 386 per judgeship and weighted filings of 418. The fourth judgeship also appears to be substantially justified when the length of trials is taken into account. This district consistently has a large number of lengthy trials and, in 1981, had 38 trials which lasted more than ten days. These factors combine into a solid justification for the district's request for four additional judgeships and the Subcommittee recommends four additional judgeships (including two previously recommended by the Judicial Conference).

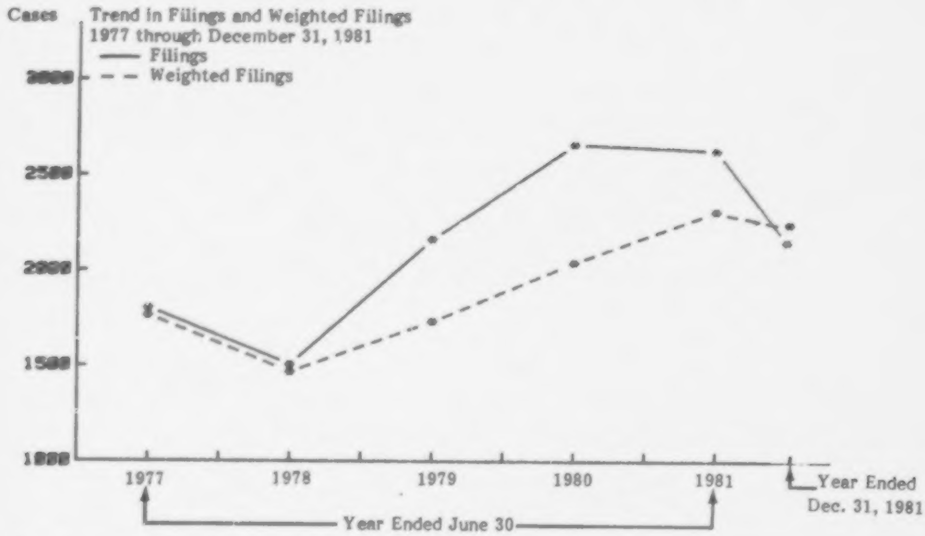
Additional Judgeships Recommended:
By Judicial Conference in 1980 2 **By Subcommittee in 1982** 2 **Total** 4

CALIFORNIA SOUTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		2,178	2,658	2,688	2,207	1,535	1,842		
	Terminations		2,502	2,895	2,290	1,903	1,949	2,284		
	Pending		2,686	2,750	2,976	2,590	2,287	2,587		
	Percent Change in Total Filings Current Year	Over June ▶		-18.1					95	15
		Over Earlier Years ▶			-19.0	-1.3	41.9	18.2	69	12
	Number of Judgeships		7	7	7	7	5	5		
	Vacant Judgeship Months		.0	2.1	24.0	15.4	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	311	390	384	315	307	368	81	11
		Civil	198	270	297	214	166	171	99	13
		Criminal	113	110	87	101	141	197	4	1
	Pending Cases		384	393	425	370	457	517	51	9
	Weighted Filings		320	330	292	248	294	353	74	10
	Terminations		357	412	327	272	370	457	61	7
	Trials Completed		51	51	45	41	69	45	19	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.9	4.2	3.8	3.6	4.0	3.6	51	9
		Civil	7	6	5	4	9	8	24	5
	From Issue to Trial (Civil Only)		14	17	19	16	13	17	36	2
	Number (and %) of Civil Cases Over 3 Years Old		122 (8.3)	149 (11.1)	131 (9.8)	136 (12.2)	93 (9.8)	66 (7.5)		
TRIALS	TOTAL		358	350	317	289	345	226		
	10 - 19 Days		4	6	5	2	6	8		
	20 Days and Over		6	6	3	5	5	3		
OTHER	Number of Defendants Filed		1,349	1,282	1,009	1,143	1,100	1,601		
	Number of Diversity Cases Filed		160	164	133	102	108	83		
MDL	Dockets		NA	1	1	1	1	1		
	Cases Pending		NA	6	12	12	20	15		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 Recommended By Circuit Council 0

In calendar year 1981, the number of cases filed in this district dropped sharply back down to the 1979 filing level. After two years of approximately 380 new filings per judgeship, 1981 filings were 311 for each of the seven authorized judgeships. Weighted filings numbered only 320 per judgeship. This figure ranked 74th among all 95 district courts. The district managed to reduce its pending caseload again this year as case terminations outnumbered filings. The district and Judicial Council have requested no additional judgeships during the current survey and the Subcommittee recommends none.

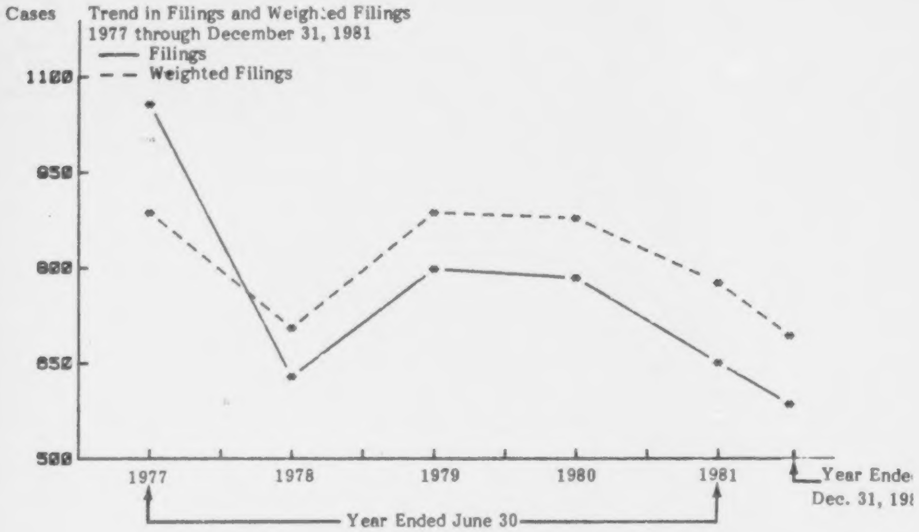
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 By Subcommittee in 1982 0 Total 0

HAWAII

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		591	654	790	691	639	1,070		
	Terminations		711	589	844	552	560	918		
	Pending		1,005	1,103	1,034	1,093	954	875		
	Percent Change in Total Filings Current Year	Over June ▶		-9.6					92	12
		Over Earlier Years ▶			-25.2	-14.5	-7.5	-44.8	91	14
Number of Judgeships			2	2	2	2	2	2		
Vacant Judgeship Months			.5	6.0	12.0	6.1	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	296	327	395	346	320	535	84	13
		Civil	263	298	361	289	268	231	83	11
		Criminal	33	29	34	57	52	304	60	11
	Pending Cases		503	552	517	547	477	438	23	3
	Weighted Filings		342	338	439	444	353	443	67	8
	Terminations		356	295	422	276	280	459	62	8
	Trials Completed		38	37	40	48	33	20	53	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.4	5.5	5.6	4.3	5.2	1.7	66	13
		Civil	16	11	15	13	15	13	88	15
	From Issue to Trial (Civil Only)		21	16	-	21	-	-	70	8
	Number (and %) of Civil Cases Over 3 Years Old		159 (16.6)	150 (14.1)	114 (11.5)	126 (12.3)	98 (11.2)	73 (9.8)		
TRIALS	TOTAL		75	74	79	96	66	40		
	10 - 19 Days		2	-	-	3	-	1		
	20 Days and Over		-	-	-	1	-	-		
OTHER	Number of Defendants Filed		96	74	94	237	132	663		
	Number of Diversity Cases Filed		191	228	253	228	171	155		
MDL	Dockets		NA	-	-	1	1	-		
	Cases Pending		NA	-	-	1	5	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 1

Filings dropped 9.6 percent in 1981 as only 296 cases were filed per authorized judgeship. On the other hand, weighted filings were substantially higher at 342. This difference between raw and weighted filings indicates that the district's mix of cases is more complex than average. Over the last four years, the district has experienced 24.6 vacant judgeship months and, as a result, the pending caseload has grown substantially. On December 31, 1981 the pending caseload stood at 503 cases per judgeship which was the 23th highest among all the district courts.

On the basis of the large pending caseload and the substantial weighted filings caseload, the Judicial Conference recommended one additional judgeship for this district in 1980. Although the weighted filings have fallen considerably since 1980, the pending caseload - particularly the three year old pending civil cases - continues to support that recommendation. The Subcommittee recommends the one additional judgeship previously approved for this district by the Judicial Conference.

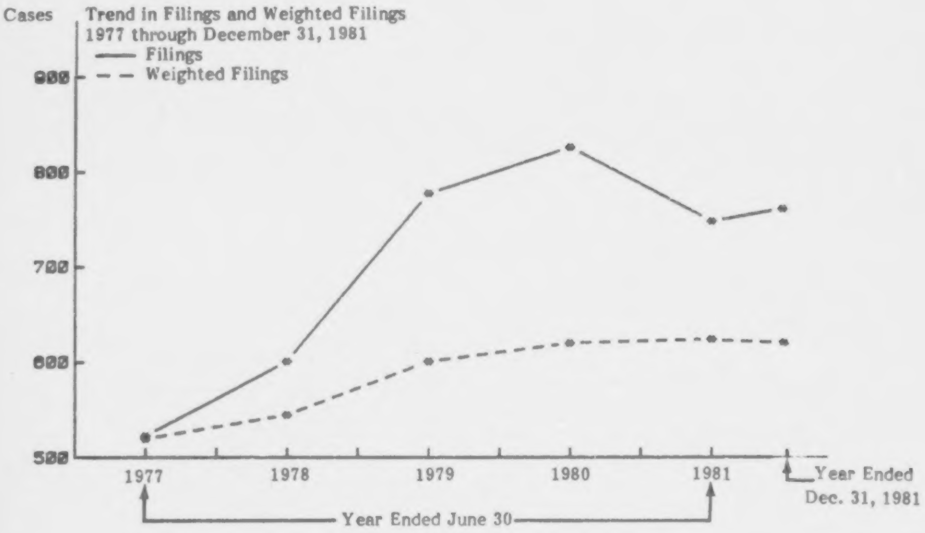
Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 0 **Total** 1

IDAHO

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings		765	754	827	787	604	523		
	Terminations		695	639	811	646	530	532		
	Pending		860	794	729	715	573	493		
	Percent Change in Total Filings Current Year	Over June ▶		1.5					73	11
		Over Earlier Years ▶			-7.5	-2.8	26.7	46.3	31	6
	Number of Judgeships		2	2	2	2	2	2		
	Vacant Judgeship Months		5.9	.0	.0	.0	.0	1.3		
ACTIONS PER JUDGESHIP	FILINGS	Total	383	377	414	394	302	262	62	7
		Civil	343	336	372	328	231	192	63	8
		Criminal	40	41	42	66	71	70	41	10
	Pending Cases		430	397	365	358	287	247	40	6
	Weighted Filings		310	312	310	301	273	260	78	11
	Terminations		348	345	406	323	265	266	66	9
	Trials Completed		45	43	47	53	41	24	31	3
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.5	3.8	4.3	2.6	2.2	3.5	31	5
		Civil	9	9	5	7	7	10	60	10
	From Issue to Trial (Civil Only)		-	17	14	17	-	15	-	-
	Number (and %) of Civil Cases Over 3 Years Old		67 (8.3)	45 (6.2)	39 (6.1)	32 (5.2)	37 (8.0)	22 (5.5)		
TRIALS	TOTAL		90	85	93	106	81	48		
	10 - 19 Days		1	1	2	2	-	2		
	20 Days and Over		1	-	-	-	1	-		
OTHER	Number of Defendants Filed		106	96	100	161	149	175		
	Number of Diversity Cases Filed		166	145	138	118	108	107		
MDL	Dockets		NA	1	1	1	1	1		
	Cases Pending		NA	2	2	2	2	2		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1 Recommended By Circuit Council 0

Over the last four years, the filings in this district have remained at approximately 400 per authorized judgeship. Weighted filings, however, have ranged only from 301 to 312 per judgeship due primarily to a substantial number of cases filed by the U. S. to recover defaulted student loans and overpayments of VA educational benefits. During the four year period of increased filings, the court has not been able to maintain pace and, as a result, the pending caseload has risen from approximately 290 per judgeship in 1978 to 430 on December 31, 1981.

The district's request for one additional judgeship is based primarily on the growth in filings over recent years and the expected continuing growth as a result of increasing population. The district has also noted that because of its size and the distance required in traveling from one place of holding court to another, the judges lose approximately four judicial days a month in travel.

The Subcommittee recognizes that the raw filings in this district are substantial at 383 per judgeship; however, the weighted filings rank only 78th among the 95 district courts and would not appear to be sufficient to justify an additional judgeship. The Ninth Circuit Judicial Council recommended no additional judgeships for this district and the Subcommittee recommends none.

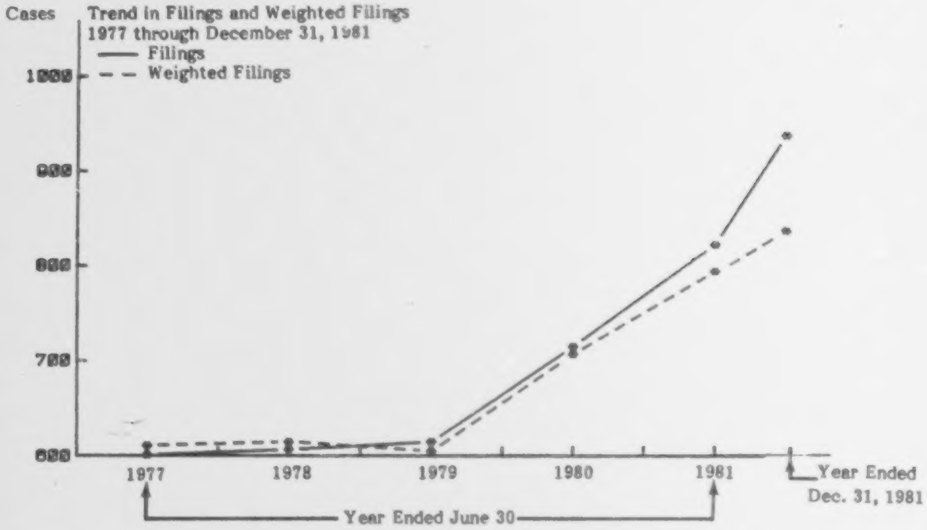
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

MONTANA

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings	940	827	721	621	611	603		
	Terminations	788	734	592	554	657	547		
	Pending	894	832	709	580	513	559		
	Percent Change in Total Filings Current Year — Over June		13.7					19	3
	Over Earlier Years			30.4	51.4	53.8	55.9	20	5
	Number of Judgeships	2	2	2	2	2	2		
	Vacant Judgeship Months	.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS — Total	470	414	361	311	306	302	29	3
	FILINGS — Civil	398	336	295	236	206	195	38	4
	FILINGS — Criminal	72	78	66	75	100	107	6	2
	Pending Cases	447	416	355	290	257	280	34	4
	Weighted Filings	417	397	353	303	308	305	35	4
	Terminations	394	352	296	277	329	274	42	4
	Trials Completed	43	45	34	33	43	49	38	4
MEDIAN TIMES (MONTHS)	From Filing to Disposition — Criminal	3.9	3.7	3.7	2.7	2.2	2.5	51	9
	From Filing to Disposition — Civil	10	11	10	10	12	11	66	11
	From Issue to Trial (Civil Only)	12	12	13	10	11	8	23	1
	Number (and %) of Civil Cases Over 3 Years Old	44 (5.3)	36 (4.7)	31 (4.9)	44 (8.2)	28 (5.9)	27 (5.6)		
TRIALS	TOTAL	86	89	65	65	85	97		
	10 - 19 Days	1	1	2	1	2	1		
	20 Days and Over	-	-	-	-	-	1		
OTHER	Number of Defendants Filed	168	191	166	166	212	245		
	Number of Diversity Cases Filed	288	249	179	160	126	131		
MDL	Dockets	NA	-	-	-	-	-		
	Cases Pending	NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 1

There has been a steady rise in the number of cases filed in this district over the last six years. Calendar year 1981 filings are approximately 56 percent greater than the 603 cases filed in 1977. Per judgeship filings now stand at 470 and weighted filings are lower at 417 per judgeship. The pending caseload has also risen gradually and on December 31, 1981 totaled 447 per judgeship. This occurred despite a 44.1 percent rise in the termination rate since 1977.

This district also has one of the largest criminal caseloads per judgeship in the nation. The 72 new criminal felonies filed per judgeship in 1981 ranked 6th among all the U. S. district courts. As noted by the district in its response to the Survey Questionnaire, most of the criminal caseload in this district arises from several Indian reservations located within the state boundaries.

The district's request for one additional judgeship has been approved by the Ninth Circuit Judicial Council. With three judgeships, calendar year 1981 workload figures would drop to 313 filings, 278 weighted filings and 298 pending cases per judgeship. On the basis of the substantial weighted filings recorded by this district in 1981 and on the basis of the trend in filings that has developed over the last six years, the Subcommittee recommends that one additional judgeship be created in the District of Montana.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 1 **Total** 1

NEVADA

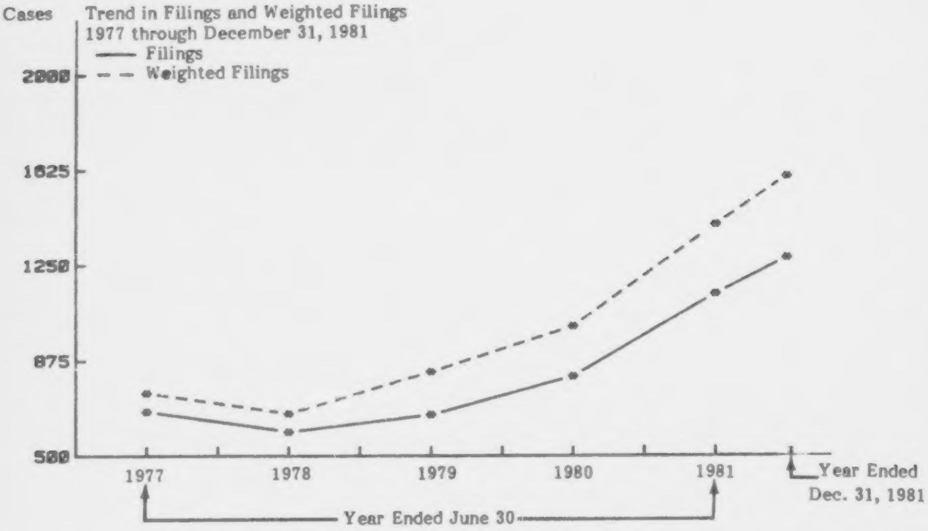
1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		1,295	1,145	820	674	611	692		
	Terminations		923	751	734	616	679	673		
	Pending		1,308	1,226	831	747	689	757		
	Percent Change in Total Filings Current Year	Over June ▶		13.1					20	4
		Over Earlier Years ▶			57.9	92.1	111.9	87.1	5	2
	Number of Judgeships		3	3	3	3	2	2		
	Vacant Judgeship Months		.0	.0	3.1	7.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	432	392	273	225	306	346	43	6
		Civil	372	319	228	183	240	248	51	6
		Criminal	60	63	45	42	66	98	11	5
	Pending Cases		436	409	277	249	345	379	36	5
	Weighted Filings		525	470	337	277	334	373	10	1
	Terminations		308	250	245	205	340	337	78	11
	Trials Completed		35	42	39	27	47	50	60	6
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.4	4.6	4.8	4.7	3.9	3.9	66	13
		Civil	7	7	10	12	15	12	24	5
	From Issue to Trial (Civil Only)		17	17	21	21	21	17	55	7
	Number (and %) of Civil Cases Over 3 Years Old		87 (7.4)	94 (8.6)	74 (10.2)	72 (11.0)	78 (12.9)	66 (10.4)		
TRIALS	TOTAL		106	125	115	82	93	100		
	10 - 19 Days		1	1	4	5	2	1		
	20 Days and Over		1	1	-	1	1	1		
OTHER	Number of Defendants Filed		256	252	249	183	189	266		
	Number of Diversity Cases Filed		474	365	168	160	132	135		
MDL	Dockets		NA	2	-	-	-	-		
	Cases Pending		NA	188	-	-	-	-		

NA – This information is compiled only for the year ended June 30.

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 2

NEVADA



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

The filings in this district increased 13.1 percent in 1981 as 1,295 new cases were filed. This resulted in 432 filings per authorized judgeship with weighted filings increasing to 525. This substantial increase over 1980 was due almost totally to case filings related to the MGM Grand Hotel fire. A substantial number of these cases were filed originally in this district with a significant number transferred in by order of the Judicial Panel on Multidistrict Litigation. The MGM multidistrict docket is being handled by a judge from the Eastern District of Pennsylvania. This district has not requested additional judgeships during the current survey, the Ninth Circuit Judicial Council has not recommended any additional judgeships, and the Subcommittee recommends none.

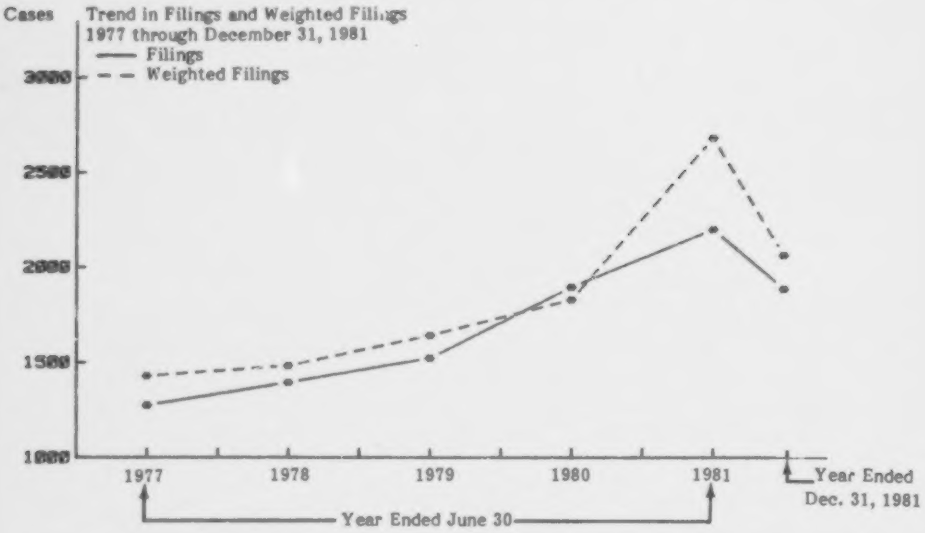
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

OREGON

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings		1,903	2,215	1,909	1,541	1,416	1,306		
	Terminations		1,935	2,196	1,731	1,321	1,447	1,391		
	Pending		1,798	1,758	1,749	1,574	1,353	1,383		
	Percent Change in Total Filings Current Year	Over June ▶		-14.1					93	13
		Over Earlier Years ▶			-.3	23.5	34.4	45.7	32	7
	Number of Judgeships		5	5	5	5	3	3		
	Vacant Judgeship Months		.0	.0	23.0	15.4	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	381	443	382	308	472	435	63	8
		Civil	355	412	343	265	399	345	59	7
		Criminal	26	31	39	43	73	90	79	14
	Pending Cases		360	354	350	315	451	461	59	11
	Weighted Filings		411	536	366	328	494	476	37	5
	Terminations		387	439	346	264	482	464	45	5
	Trials Completed		46	43	29	41	61	69	28	2
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.7	4.7	3.9	4.0	3.7	5.3	82	15
		Civil	8	7	9	10	11	11	42	7
	From Issue to Trial (Civil Only)		16	15	15	15	14	15	49	6
	Number (and %) of Civil Cases Over 3 Years Old		89 (5.3)	76 (4.7)	70 (4.4)	64 (4.5)	60 (4.9)	44 (3.6)		
TRIALS	TOTAL		228	217	144	203	184	208		
	10 - 19 Days		1	2	1	4	1	-		
	20 Days and Over		1	1	1	-	1	-		
OTHER	Number of Defendants Filed		194	225	268	289	262	371		
	Number of Diversity Cases Filed		435	447	347	303	289	307		
MDL	Dockets		NA	-	-	1	1	-		
	Cases Pending		NA	-	-	5	5	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District NR **Recommended By Circuit Council** 0

After a substantial increase of 16 percent last year, filings fell 14.1 percent in calendar year 1981. Major decreases in U. S. contract, other personal injury and civil rights cases account for most of the decline. For calendar year 1981, filings stood at 381 per judgeship with weighted filings higher at 411. The pending caseload of 360 per judgeship ranks 59th among all district courts. The district and Judicial Council have not requested any additional judgeships and the Subcommittee recommends none.

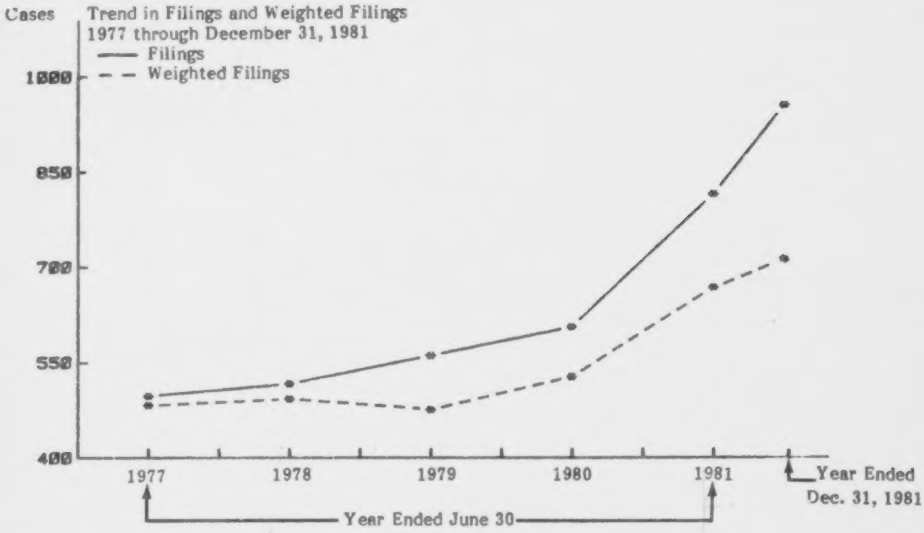
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

WASHINGTON EASTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING	
			December 31	June 30					WITHIN	
			1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings		960	820	607	568	525	509		
	Terminations		773	751	568	492	520	448		
	Pending		854	733	664	626	548	542		
	Percent Change in Total Filings Current Year	Over June		17.1					13	1
		Over Earlier Years			58.2	69.0	82.9	88.6	4	1
Number of Judgeships			2	2	2	2	1.5	1.5		
Vacant Judgeship Months			.0	.0	15.0	7.7	5.5	6.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	480	410	304	284	350	339	25	2
		Civil	409	341	232	214	249	232	34	3
		Criminal	71	69	72	70	101	107	7	3
	Pending Cases		427	357	332	313	365	361	41	7
	Weighted Filings		355	334	264	239	329	322	59	7
	Terminations		387	376	284	246	347	299	45	5
	Trials Completed		28	25	28	30	41	41	78	10
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.1	3.1	2.6	2.8	2.7	3.2	20	2
		Civil	8	10	13	10	12	11	42	7
	From Issue to Trial (Civil Only)		-	-	-	-	-	-	-	-
	Number (and %) of Civil Cases Over 3 Years Old		77 (10.3)	72 (11.1)	54 (9.1)	57 (10.6)	44 (10.0)	44 (10.1)		
TRIALS	TOTAL		55	40	53	59	62	61		
	10 - 19 Days		2	2	-	2	-	-		
	20 Days and Over		-	-	1	-	-	-		
OTHER	Number of Defendants Filed		180	162	170	141	150	177		
	Number of Diversity Cases Filed		80	83	53	46	57	48		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District NR **Recommended By Circuit Council** 0

Case filings in this district rose 17.1 percent in 1981, resulting in 480 filings and 355 weighted filings per authorized judgeship. Most of the increase was in U. S. contract cases filed to recover overpayments, including overpayments of veterans benefits, which carry a low weight. This explains why the weighted filings per judgeship were substantially lower than raw filings.

The criminal caseload per judgeship in this district is among the highest in the country. In 1981, criminal filings totaled 71 per judgeship, which was the seventh largest among all district courts. However, one out of every four criminal cases involves immigration laws and these cases are assigned a low weight.

The district and Judicial Council have not requested additional judgeships and the Subcommittee recommends no additional judgeships.

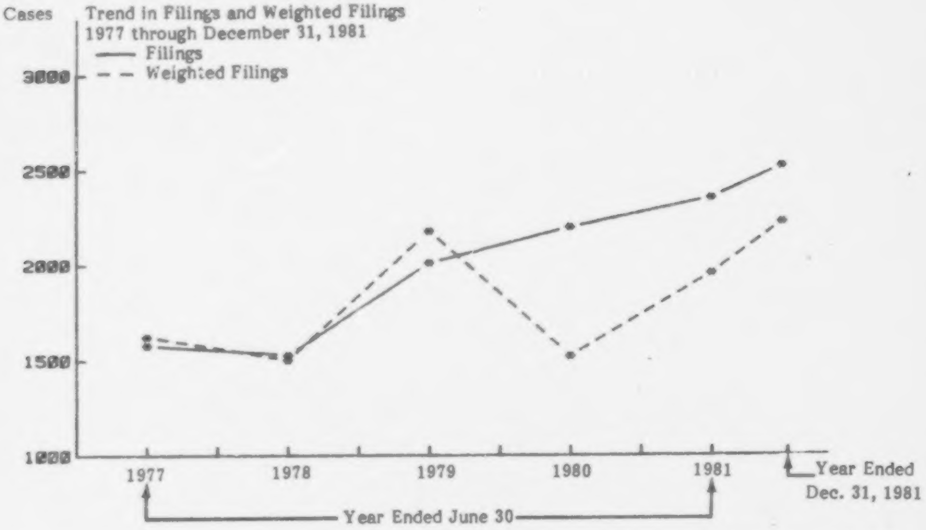
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

WASHINGTON WESTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		2,545	2,373	2,211	2,033	1,552	1,599		
	Terminations		2,370	2,434	2,015	1,541	1,534	1,431		
	Pending		2,781	2,617	2,646	2,451	1,958	1,941		
	Percent Change in Total Filings Current Year	Over June ▶		7.2					42	7
		Over Earlier Years ▶			15.1	25.2	64.0	59.2	16	4
	Number of Judgeships		5	5	5	5	3.5	3.5		
	Vacant Judgeship Months		8.8	8.3	8.6	7.7	5.5	6.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	509	475	442	407	443	457	21	1
		Civil	456	426	390	343	340	345	21	1
		Criminal	53	49	52	64	103	112	29	8
	Pending Cases		556	523	529	490	559	555	18	2
	Weighted Filings		432	391	304	435	429	464	30	3
	Terminations		474	491	403	308	438	409	16	1
	Trials Completed		30	33	47	33	38	42	70	9
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.2	4.2	3.5	4.0	4.0	3.7	61	12
		Civil	10	10	10	13	11	10	66	11
	From Issue to Trial (Civil Only)		15	20	23	32	-	22	42	4
	Number (and %) of Civil Cases Over 3 Years Old		163 (6.3)	173 (7.1)	205 (8.3)	222 (10.0)	184 (10.9)	112 (6.9)		
TRIALS	TOTAL		152	165	235	163	133	146		
	10 - 19 Days		3	6	3	3	2	1		
	20 Days and Over		4	3	1	3	1	-		
OTHER	Number of Defendants Filed		395	342	342	456	493	553		
	Number of Diversity Cases Filed		317	283	176	311	128	154		
MDL	Dockets		NA	3	3	4	5	4		
	Cases Pending		NA	188	186	188	12	17		

NA – This information is compiled only for the year ended June 30.


Trend in Filings and Weighted Filings
1977 through December 31, 1981

ANALYSIS

Additional Judgeships Requested: By District 1&1T **Recommended By Circuit Council** 1&1T

Filings increased to 509 per judgeship in 1981 with weighted filings substantially lower at 432. Even with a number of vacant judgeship months in 1981, the district managed to terminate almost as many cases as were filed; however, the pending caseload at 556 per authorized judgeship remains substantial, ranking 18th in the nation.

In 1980, the Judicial Conference recommended the creation of one additional judgeship in this district based primarily on the level of weighted filings in 1979. The Conference also recommended that one temporary judgeship be created for this district to assist in reducing the substantial backlog which in 1979 was 490 cases per authorized judgeship. Since those recommendations were made, filings have risen by 25.2 percent, weighted filings have remained at the same level, and the pending caseload has grown by approximately 14 percent. The current caseload figures continue to justify the district's and Judicial Council's requests that the one permanent and one temporary position, again be recommended for this district.

Additional Judgeships Recommended:
By Judicial Conference in 1980 1&1T **By Subcommittee in 1982** 0 **Total** 1&1T

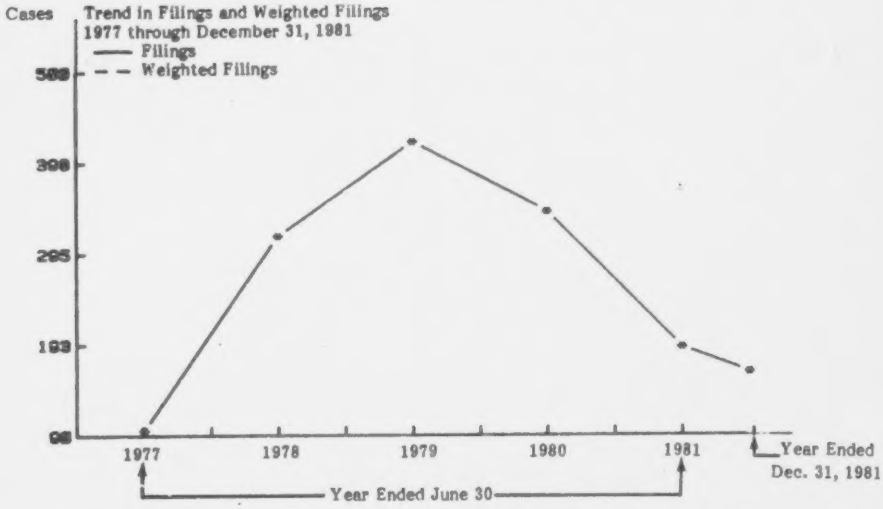
GUAM

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		163	190	343	420	318	96		
	Terminations		133	149	233	198	162	140		
	Pending		805	790	739	630	408	252		
	Percent Change in Total Filings Current Year	Over June ▶		-14.2					94	14
		Over Earlier Years ▶			-52.5	-61.2	-48.8	69.8	12	3
	Number of Judgeships		1	1	1	1	1	1		
	Vacant Judgeship Months		.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	163	190	343	420	318	96	93	14
		Civil	112	138	288	343	268	72	93	14
		Criminal	51	52	55	77	50	24	24	9
	Pending Cases		805	790	739	630	408	252	1	1
	Weighted Filings		-	-	-	-	-	-	-	-
	Terminations		133	149	233	198	162	140	93	14
	Trials Completed		3	6	4	9	8	8	95	15
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.6	2.1	4.0	2.6	4.7	4.5	5	1
		Civil	14	13	10	17	17	30	85	14
	From Issue to Trial (Civil Only)		-	-	-	-	-	-	-	-
	Number (and %) of Civil Cases Over 3 Years Old		197 (66.1)	128 (42.5)	6 (2.0)	17 (4.8)	59 (21.0)	79 (42.2)		
TRIALS	TOTAL		3	6	4	9	8	8		
	10 - 19 Days		-	-	-	-	-	-		
	20 Days and Over		-	-	-	-	-	-		
OTHER	Number of Defendants Filed		71	73	71	95	67	37		
	Number of Diversity Cases Filed		-	-	-	-	-	-		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.

GUAM



ANALYSIS

Additional Judgeships Requested: By District NR **Recommended By Circuit Council** 0

The caseload statistics for this district, especially filings, are among the lowest in the country with the exception of criminal filings per judgeship. In 1981, filings of 163 for the one judge authorized for this district rank 93rd among the 95 district courts. Terminations were also among the lowest with only 133 cases closed during the year. The pending caseload per judgeship, however, is the highest among all of the U. S. district courts. This district now has 805 cases pending - approximately 54 percent of which involve land condemnation actions.

While the pending caseload in this district is substantial, it is made up primarily of one case type. It would not appear that this caseload is excessive in light of the low level of filings recorded in this district each year. The district has requsted no additional judgeships, the Judicial Council has requested none and the Subcommittee recommends no additional judgeships for this district.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

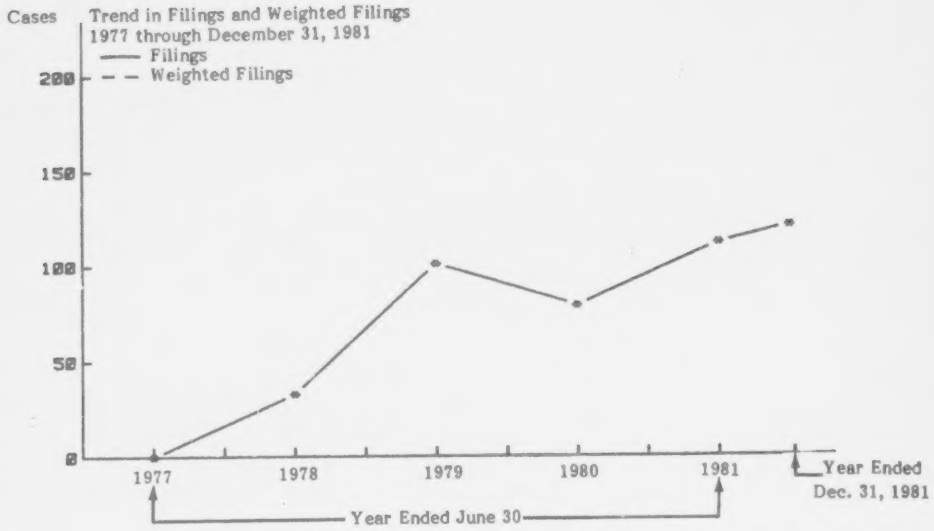
NORTHERN MARIANA ISLAND

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		121	112	79	101	33	0		
	Terminations		89	98	75	70	1	0		
	Pending		103	81	67	63	32	0		
	Percent Change in Total Filings Current Year	Over June		8.0					38	6
		Over Earlier Years			53.2	19.8	266.7	.0	-	-
	Number of Judgeships		1	1	1	1	1	0		
	Vacant Judgeship Months		.0	.0	.0	.0	5.7	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	121	112	79	101	33	0	94	15
		Civil	99	88	63	84	26	0	94	15
		Criminal	22	24	16	17	7	0	85	15
	Pending Cases		103	81	67	63	32	0	94	15
	Weighted Filings		-	-	-	-	-	-	-	-
	Terminations		89	98	75	70	1	0	95	15
	Trials Completed		12	17	21	21	0	0	94	14
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.3	-	-	-	-	-	24	4
		Civil	8	8	10	3	-	-	42	7
	From Issue to Trial (Civil Only)		-	-	-	-	-	-	-	-
	Number (and %) of Civil Cases Over 3 Years Old		1 (1.1)	1 (1.4)	0 (.0)	0 (.0)	0 (.0)	0 (.0)		
TRIALS	TOTAL		12	17	21	21	-	-		
	10 - 19 Days		-	-	-	-	-	-		
	20 Days and Over		-	-	-	-	-	-		
OTHER	Number of Defendants Filed		30	33	22	22	10	-		
	Number of Diversity Cases Filed		-	-	-	-	-	-		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.

** - Public Law 95-157 established the District Court of the Northern Mariana Islands on November 8, 1977. Court was convened January 9, 1978.



ANALYSIS

Additional Judgeships Requested: By District 0 Recommended By Circuit Council 0

Next to the Canal Zone, this district has the lowest number of cases filed per judgeship among the 95 district courts. The pending caseload is, likewise, next to the lowest in the country and terminations per judgeship were the lowest. The district and Judicial Council have not requested additional judgeships and the Subcommittee recommends no additional judgeships.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 By Subcommittee in 1982 0 Total 0

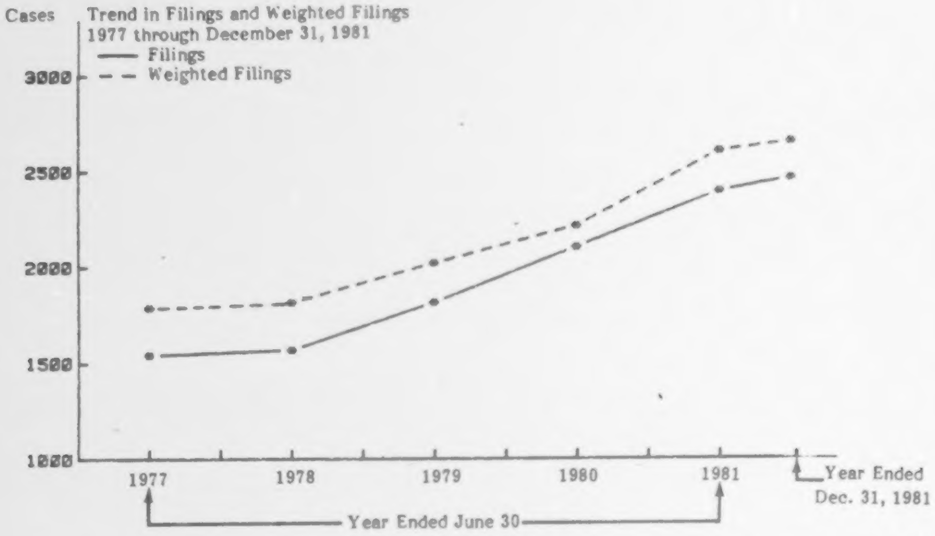
TENTH CIRCUIT
United States District Courts

COLORADO

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN U.S. CIRCUIT	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings	2,481	2,417	2,122	1,832	1,590	1,571		
	Terminations	2,250	1,928	2,172	1,760	1,498	1,553		
	Pending	2,176	2,192	1,693	1,748	1,675	1,584		
	Percent Change in Total Filings Current Year	Over June ▶	2.6					67	6
		Over Earlier Years ▶		16.9	35.4	56.0	57.9	19	2
	Number of Judgeships	6	6	6	6	4	4		
	Vacant Judgeship Months	.0	.0	6.8	15.4	6.1	10.0		
ACTIONS PER JUDGESHIP	FILINGS Total	414	403	354	305	398	393	52	4
	FILINGS Civil	384	374	312	262	321	306	44	4
	FILINGS Criminal	30	29	42	43	77	87	69	8
	Pending Cases	363	364	282	291	419	396	58	2
	Weighted Filings	442	451	369	337	454	448	29	4
	Terminations	375	321	362	293	375	388	57	6
	Trials Completed	68	73	64	80	98	82	3	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition Criminal	4.1	4.1	3.5	3.8	2.9	3.6	57	7
	From Filing to Disposition Civil	6	7	6	8	12	10	9	1
	From Issue to Trial (Civil Only)	13	14	17	18	20	14	35	6
	Number (and %) of Civil Cases Over 3 Years Old	90 (4.4)	102 (5.0)	111 (7.2)	130 (8.1)	99 (6.6)	83 (5.8)		
TRIALS	TOTAL	406	440	382	480	393	329		
	10 - 19 Days	4	4	4	2	1	4		
	20 Days and Over	1	1	1	-	-	-		
OTHER	Number of Defendants Filed	235	240	341	333	370	476		
	Number of Diversity Cases Filed	606	614	410	347	327	335		
MDL	Dockets	NA	-	-	-	3	2		
	Cases Pending	NA	-	-	-	8	5		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Case filings in calendar year 1981 were only 2.6 percent above the number recorded during the year ended June 30, 1981. This resulted in 414 new cases per judgeship. Much of the increase in recent years has been due to cases involving the U. S. government's efforts to recover defaulted student loans and overpayments of VA benefits. These cases totaled 397 in calendar year 1981. Weighted filings in this district now stand at 442 per judgeship. This higher weighted filings level is a result of a large number of civil rights cases and product liability filings; these cases are weighted heavier than average - some with weights as high as 3.4.

With the exception of the year ended June 30, 1981, the district has managed to maintain a termination rate approximately the same as the filing rate. This has resulted in a pending backlog of only 363 cases per judgeship - 58th among all district courts.

The district and Judicial Council did not request additional judgeships during the current survey; the Subcommittee agrees that none are required.

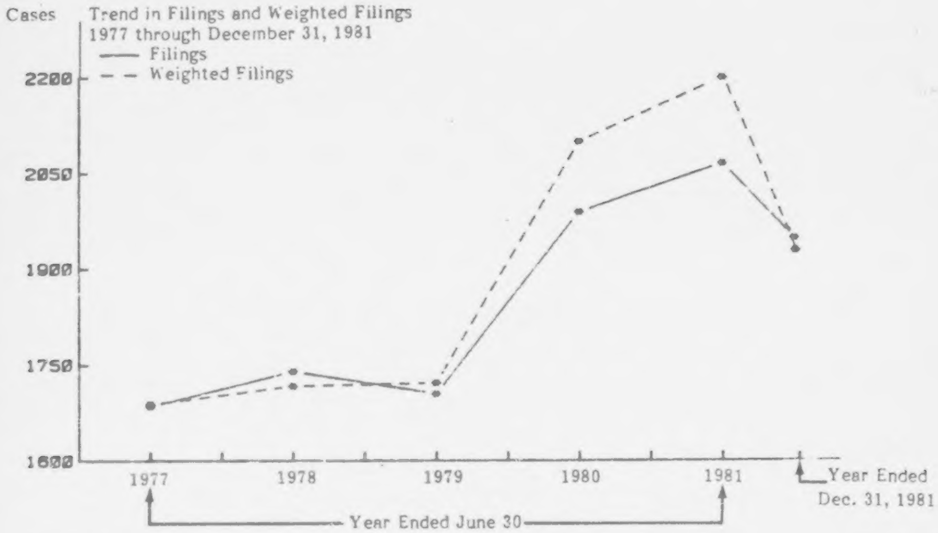
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

KANSAS

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						Numerical Standing Within	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	Circuit
OVERALL WORKLOAD STATISTICS	Filings		1,956	2,072	1,994	1,717	1,757	1,710		
	Terminations		2,012	1,938	1,819	1,795	1,595	1,423		
	Pending		2,302	2,334	2,218	2,044	2,122	1,960		
	Percent Change in Total Filings Current Year	Over June ▶		-5.6					89	8
		Over Earlier Years ▶			-1.9	13.9	11.3	14.4	76	8
	Number of Judgeships		5	5	5	5	4	4		
	Vacant Judgeship Months		4.7	.0	13.9	7.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	391	414	399	343	439	428	60	5
		Civil	339	357	363	302	357	329	65	6
		Criminal	52	47	36	41	82	99	22	3
	Pending Cases		460	451	444	409	531	490	30	1
	Weighted Filings		385	440	420	344	429	422	46	5
	Terminations		402	398	364	359	399	356	39	3
	Trials Completed		42	43	34	27	43	31	39	7
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.7	3.8	3.9	4.0	3.2	3.4	40	5
		Civil	11	9	9	12	12	12	72	8
	From Issue to Trial (Civil Only)		21	23	28	21	20	23	70	8
	Number (and %) of Civil Cases Over 3 Years Old		231 (10.7)	240 (11.3)	240 (11.6)	195 (10.5)	164 (8.7)	138 (8.1)		
TRIALS	TOTAL		213	214	172	137	171	123		
	10 - 19 Days		4	6	4	2	3	-		
	20 Days and Over		1	1	-	2	-	-		
OTHER	Number of Defendants Filed		345	328	239	278	420	522		
	Number of Diversity Cases Filed		558	766	629	497	472	545		
MDL	Dockets		NA	2	3	4	5	5		
	Cases Pending		NA	239	261	236	373	351		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

The number of new cases filed in this district in calendar year 1981 was 5.6 percent below the number reported during the year ended June 30, 1981. This resulted in raw filings of 391 per judgeship with weighted filings slightly lower at 385. A substantial number of the A. H. Robins Co., Inc. (re: Dalkon Shield) cases have been transferred to this district by the Judicial Panel on Multidistrict Litigation (MDL). These personal injury product liability cases require a great amount of judicial involvement and are weighted heavier than the average case. Even with this large MDL docket, the district managed to terminate more cases than were filed in 1981. As a result of the consistently high termination rates, the pending caseload has not grown substantially over the last three years. On December 31, 1981, the pending caseload stood at 460 per judgeship.

The District and Judicial Council have not requested additional judgeships and the Subcommittee agrees that no additional judgeships are required.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

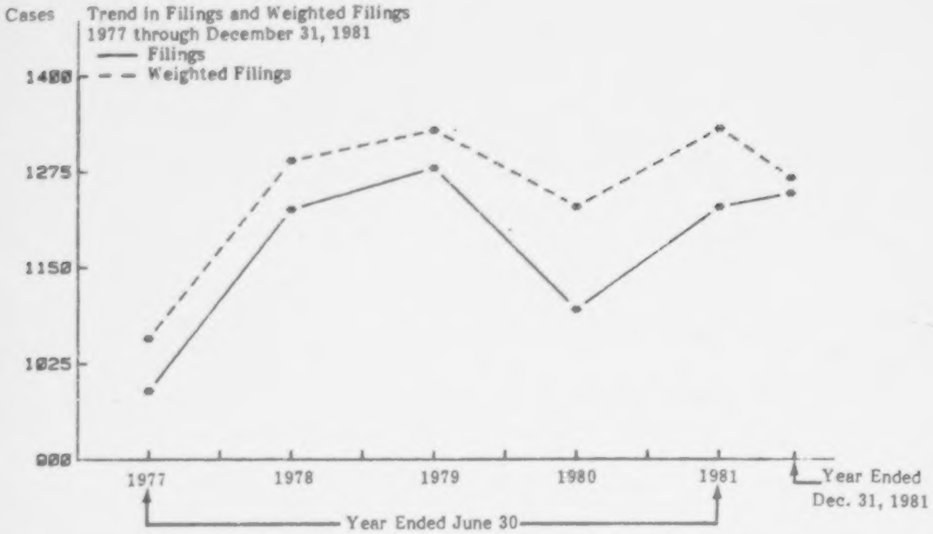
NEW MEXICO

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						[illegible]	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS		Filings	1,250	1,232	1,099	1,285	1,235	1,005		
		Terminations	1,275	1,199	1,026	1,230	1,057	942		
		Pending	1,039	1,025	991	919	864	686		
	Percent Change in Total Filings Current Year	Over June		1.5					73	7
		Over Earlier Years			13.7	-2.7	1.2	24.4	59	5
		Number of Judgeships	4	4	4	4	3	3		
		Vacant Judgeship Months	.0	.0	4.4	8.3	2.8	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	313	308	275	321	412	335	80	8
		Civil	274	262	234	267	316	250	81	8
		Criminal	39	46	41	54	96	85	44	5
		Pending Cases	260	256	248	230	288	229	87	7
		Weighted Filings	315	333	307	333	430	353	76	7
		Terminations	319	300	257	309	352	314	75	8
		Trials Completed	58	58	54	52	72	82	11	3
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.5	3.4	3.1	3.3	2.1	2.6	31	4
		Civil	7	6	7	7	7	7	24	3
		From Issue to Trial (Civil Only)	7	6	7	6	4	5	4	1
		Number (and %) of Civil Cases Over 3 Years Old	17 (1.9)	21 (2.4)	24 (2.9)	22 (2.9)	18 (2.6)	11 (2.1)		
TRIALS		TOTAL	231	232	216	209	215	245		
		10 - 19 Days	1	1	2	6	1	1		
		20 Days and Over	-	-	2	-	1	1		
OTHER		Number of Defendants Filed	247	288	223	299	393	369		
		Number of Diversity Cases Filed	316	343	309	285	282	235		
MDL		Dockets	NA	1	1	-	-	-		
		Cases Pending	NA	4	4	-	-	-		

NA – This information is compiled only for the year ended June 30.

NEW MEXICO


Trend in Filings and Weighted Filings
1977 through December 31, 1981

ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Total filings per judgeship numbered 313 in calendar year 1981, and weighted filings were almost identical at 315 per judgeship. This district ranked 11th in the nation in number of trials completed per judgeship. Median times for civil case disposition are among the best in the nation and there are only 17 civil cases over three years old. The district and Judicial Council have not requested additional judgeships and on the basis of the current workload the Subcommittee recommends no additional judgeships.

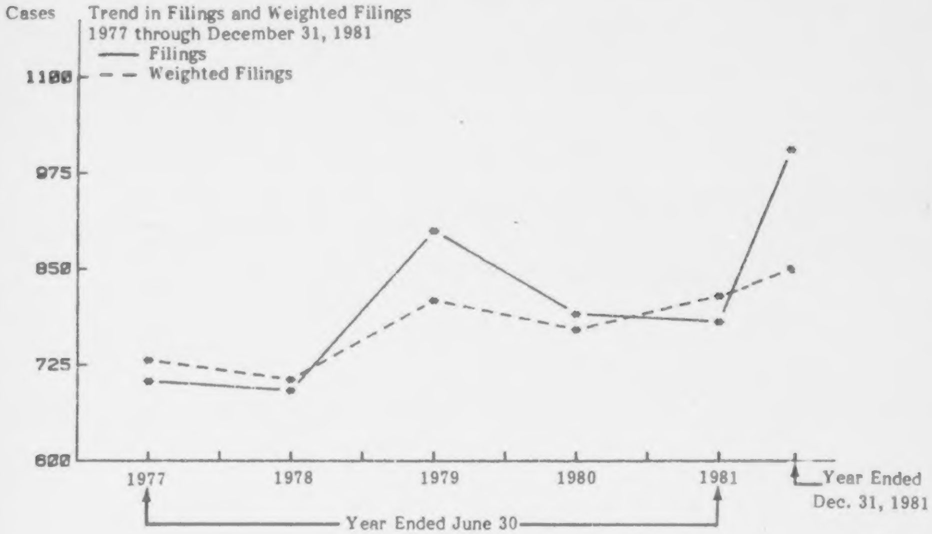
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

OKLAHOMA NORTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings		1,006	792	800	909	700	709		
	Terminations		920	838	883	642	647	760		
	Pending		936	759	785	869	602	549		
	Percent Change in Total Filings Current Year	Over June ▶		28.6					5	1
		Over Earlier Years ▶			25.8	10.7	43.7	41.9	37	3
	Number of Judgeships		2.7	2.7	2.7	1.4	1.4	1.4		
	Vacant Judgeship Months		3.9	.0	8.4	11.8	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	377	293	300	340	500	506	65	6
		Civil	344	253	256	296	412	410	62	5
		Criminal	33	30	44	44	88	96	63	7
	Pending Cases		351	295	294	325	430	392	64	4
	Weighted Filings		314	306	289	303	504	521	77	8
	Terminations		345	303	331	240	462	543	67	7
	Trials Completed		44	47	45	29	61	69	36	6
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.7	2.8	2.5	2.5	2.0	2.9	8	1
		Civil	8	8	9	7	8	7	42	6
	From Issue to Trial (Civil Only)		11	11	14	-	6	7	17	4
	Number (and %) of Civil Cases Over 3 Years Old		66 (7.6)	51 (8.9)	60 (9.1)	59 (9.4)	38 (7.6)	35 (7.0)		
TRIALS	TOTAL		118	125	119	77	86	97		
	10 - 19 Days		6	4	1	1	–	–		
	20 Days and Over		–	–	–	–	–	1		
OTHER	Number of Defendants Filed		106	101	151	150	137	212		
	Number of Diversity Cases Filed		338	310	300	265	214	228		
MDL	Dockets		NA	2	2	1	1	1		
	Cases Pending		NA	36	36	29	29	30		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

In calendar year 1981, this district recorded 377 raw filings and 314 weighted filings for each judgeship. The tremendous rise in filings occurred primarily because of a large increase in cases involving student loans and VA benefits. The pending caseload per judgeship rose substantially this year but at 351 ranks 64th among all district courts. Median times from filing to disposition of criminal cases and from issue to trial of civil cases are low. The district and Judicial Council have requested no additional judgeships and the Subcommittee agrees that the current complement of judgeships is well able to handle the workload. The Subcommittee recommends no additional judgeships.

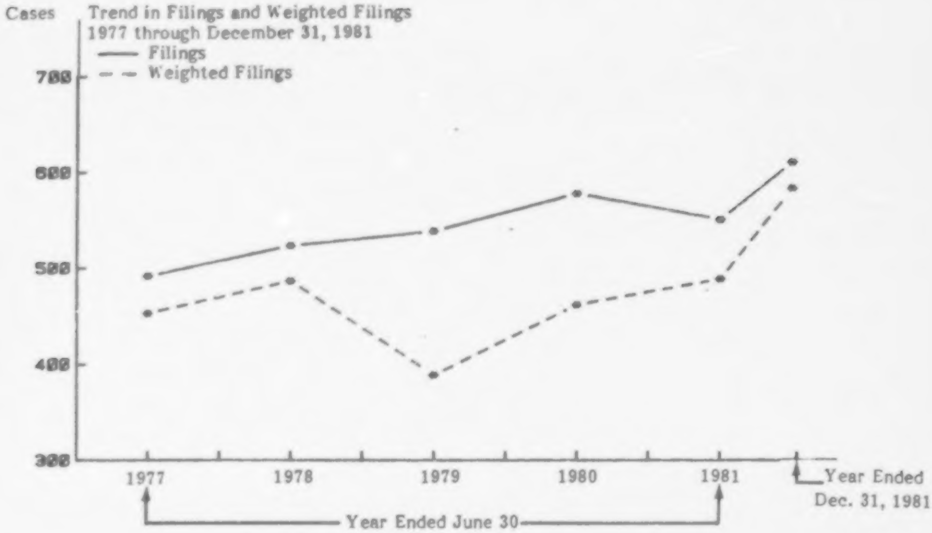
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

OKLAHOMA EASTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						[illegible]	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		615	554	581	541	527	495		
	Terminations		631	579	549	521	493	480		
	Pending		339	347	372	344	323	289		
	Percent Change in Total Filings Current Year	Over June ▶		11.0					26	4
		Over Earlier Years ▶			5.9	13.7	16.7	24.2	62	6
	Number of Judgeships		1.7	1.7	1.7	1.7	1.7	1.7		
	Vacant Judgeship Months		3.9	.0	4.2	11.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	369	332	349	324	316	298	69	7
		Civil	322	296	301	266	260	243	69	7
		Criminal	47	36	48	58	56	55	28	4
	Pending Cases		203	208	223	206	193	174	90	8
	Weighted Filings		336	293	277	234	292	273	69	6
	Terminations		379	347	329	312	295	289	52	4
	Trials Completed		46	53	35	45	49	51	29	4
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.8	2.9	2.4	2.6	1.6	2.3	9	2
		Civil	8	9	4	5	6	7	42	6
	From Issue to Trial (Civil Only)		10	12	-	-	8	7	12	3
	Number (and %) of Civil Cases Over 3 Years Old		5 (1.7)	5 (1.7)	10 (3.0)	7 (2.3)	3 (1.0)	1 (.4)		
TRIALS	TOTAL		76	89	58	75	82	84		
	10 - 19 Days		-	-	1	-	-	-		
	20 Days and Over		-	-	-	-	-	-		
OTHER	Number of Defendants Filed		100	81	119	133	157	110		
	Number of Diversity Cases Filed		209	171	154	131	159	133		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

In calendar year 1981, case filings were 11.0 percent above the level for the year ended June 30, 1981. Case filings are now 369 per judgeship with weighted filings slightly lower at 336. The district has reduced its pending caseload by nearly 9.0 percent since June 30, 1980. The December 31, 1981 pending caseload of 203 per judgeship is 90th among all district courts. Pending civil cases over three years old number only five and represent only 1.7 percent of the backlog. The median disposition times are also efficient, especially for criminal cases.

The district and Judicial Council have requested no additional judgeships and, based on the current workload, the Subcommittee recommends none.

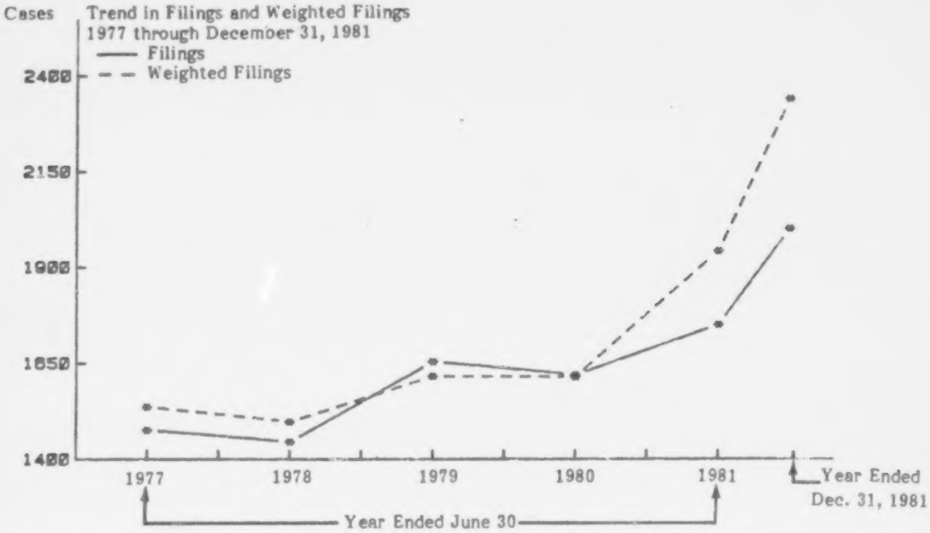
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

OKLAHOMA WESTERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN [illegible]	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		2,015	1,753	1,625	1,667	1,456	1,491		
	Terminations		1,755	1,658	1,695	1,508	1,396	1,324		
	Pending		1,263	1,143	1,038	1,108	949	889		
	Percent Change in Total Filings Current Year	Over June ▶		14.3					19	3
		Over Earlier Years ▶			24.0	20.9	38.4	35.1	47	4
	Number of Judgeships		3.7	3.7	3.7	2.9	2.9	2.9		
	Vacant Judgeship Months		3.9	.0	4.2	7.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	549	431	443	454	497	508	11	1
		Civil	493	441	396	399	427	405	11	1
		Criminal	56	40	47	55	70	103	16	2
	Pending Cases		344	312	283	302	324	303	66	5
	Weighted Filings		621	529	440	441	511	524	2	1
	Terminations		479	452	462	411	476	452	15	1
	Trials Completed		45	58	72	38	63	88	31	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.9	2.8	2.7	2.4	2.4	2.4	15	3
		Civil	6	6	6	5	7	7	8	1
	From Issue to Trial (Civil Only)		9	10	10	10	8	8	8	2
	Number (and %) of Civil Cases Over 3 Years Old		30 (2.6)	42 (3.9)	35 (3.6)	41 (4.0)	33 (3.7)	17 (2.1)		
TRIALS	TOTAL		165	248	263	138	186	257		
	10 - 19 Days		4	4	5	2	1	1		
	20 Days and Over		2	2	-	1	-	1		
OTHER	Number of Defendants Filed		275	213	270	270	290	427		
	Number of Diversity Cases Filed		881	750	608	547	532	495		
MDL	Dockets		NA	1	-	1	3	2		
	Cases Pending		NA	2	-	2	6	8		

NA – This information is compiled only for the year ended June 30.



Trend in Filings and Weighted Filings
1977 through December 31, 1981

ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 1

After a slight drop in 1980, case filings have risen substantially. In calendar year 1981 filings numbered 549 per judgeship. Weighted filings per judgeship were even greater at 621, indicating a complex mix of cases. Among new case filings were many "other" real property diversity actions and personal injury product liability cases which have a higher than average weight. There has also been a substantial increase in the number of criminal fraud case filings. This has resulted in a weighted filings level which ranks 2nd among all district courts. Despite the heavy workload, terminations per judgeship ranked 15th and median times for both civil and criminal cases were among the lowest in the nation.

The Judicial Conference recommended an additional judgeship for this district in 1980 on the basis of the heavy weighted and unweighted workload. The addition of this judgeship would reduce workload figures to 432 filings, 492 weighted filings, and 271 pending cases per judgeship. Considering the adjusted low pending caseload per judge in conjunction with the high termination rate, the Subcommittee agrees with the district and Judicial Council and recommends the one additional judgeship previously approved by the Judicial Conference in 1980.

Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 0 **Total** 1

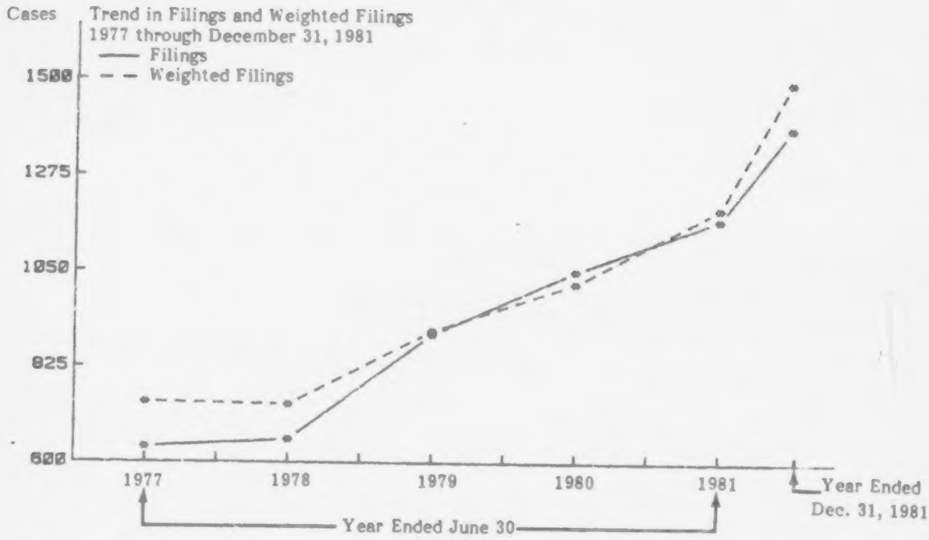
UTAH

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings		1,390	1,175	1,061	910	658	647		
	Terminations		1,132	1,071	1,025	824	556	551		
	Pending		1,070	1,033	899	869	783	681		
	Percent Change in Total Filings Current Year	Over June ▶		18.3					9	2
		Over Earlier Years ▶			31.0	52.7	111.2	114.8	2	1
	Number of Judgeships		3	3	3	3	2	2		
	Vacant Judgeship Months		.0	.0	5.7	11.0	3.9	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	463	392	354	303	329	324	31	2
		Civil	426	350	311	260	270	250	26	2
		Criminal	37	42	43	43	59	74	52	6
	Pending Cases		357	334	300	290	392	340	60	3
	Weighted Filings		486	339	340	304	369	371	17	2
	Terminations		377	357	342	275	278	276	55	5
	Trials Completed		41	38	26	28	40	32	42	8
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.2	4.2	3.2	4.5	5.8	5.8	61	8
		Civil	7	8	6	9	10	9	24	3
	From Issue to Trial (Civil Only)		17	15	18	14	-	12	55	7
	Number (and %) of Civil Cases Over 3 Years Old		45 (4.4)	48 (5.1)	52 (6.2)	55 (6.9)	64 (9.1)	31 (5.4)		
TRIALS	TOTAL		124	112	78	85	80	64		
	10 - 19 Days		3	3	4	3	2	3		
	20 Days and Over		1	1	2	-	-	-		
OTHER	Number of Defendants Filed		148	186	164	177	161	185		
	Number of Diversity Cases Filed		368	283	188	162	164	128		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.

UTAH



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Case filings have increased steadily in this district in the last four years and now number 463 per judgeship. Weighted filings are slightly higher at 486 per judgeship, 17th among all district courts. Terminations have also increased but, at 377 per judgeship, are still below the filings rate. The pending caseload at 357 per judgeship is 60th among all districts. There are only 45 civil cases over three years old — a small 4.4 percent of the backlog.

The district and Judicial Council have not requested additional judgeships and the Subcommittee recommends no additional judgeships.

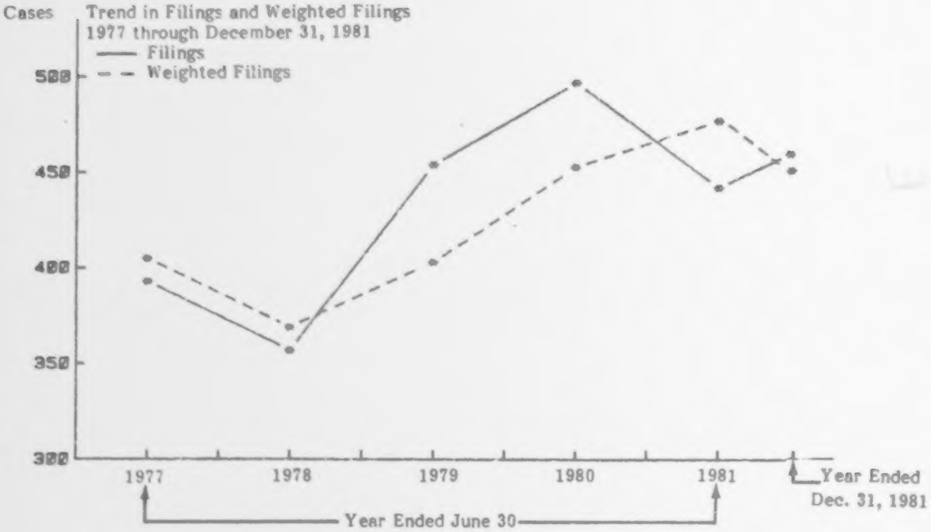
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

WYOMING

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						[illegible]	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		461	446	499	458	362	397		
	Terminations		449	453	446	395	379	371		
	Pending		304	290	287	236	173	190		
	Percent Change in Total Filings Current Year	Over June ▶		3.4					60	5
		Over Earlier Years ▶			-7.6	.7	27.3	16.1	73	7
	Number of Judgeships		1	1	1	1	1	1		
	Vacant Judgeship Months		.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	461	446	499	459	362	397	33	3
		Civil	404	358	418	383	240	254	36	3
		Criminal	57	78	81	75	122	143	15	1
	Pending Cases		304	230	287	236	173	190	74	6
	Weighted Filings		452	478	453	403	369	405	25	3
	Terminations		449	453	446	395	379	371	22	2
	Trials Completed		67	77	96	58	76	67	5	2
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.9	3.8	3.4	2.6	1.8	2.0	51	6
		Civil	7	8	7	4	7	8	24	3
	From Issue to Trial (Civil Only)		12	9	11	-	7	8	23	5
	Number (and %) of Civil Cases Over 3 Years Old		4 (1.4)	2 (.9)	4 (1.5)	8 (3.7)	5 (3.2)	4 (2.3)		
TRIALS	TOTAL		67	77	96	58	76	67		
	10 - 19 Days		-	-	2	1	1	1		
	20 Days and Over		-	-	1	-	-	-		
OTHER	Number of Defendants Filed		82	110	87	94	118	159		
	Number of Diversity Cases Filed		142	150	162	122	103	117		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 1 Recommended By Circuit Council 1

Total case filings rose to 461 in Wyoming in calendar year 1981 with weighted filings slightly lower at 452. Criminal case filings in this one judge district are still among the highest in the nation, ranking 15th in calendar year 1981. The district ranked fifth in the nation in the number of trials completed per judgeship. Despite the number of trials in 1981, case terminations were well above the national average.

The district has maintained its efficient termination rate with the help of one senior judge who is now over 81 years of age. His services cannot be expected to continue at the same level and the workload is clearly too heavy for only one judge to handle. A second judgeship would reduce total filings to 231, weighted filings to 226 and pending cases to 152 per judgeship.

Both the district and Judicial Council have requested that an additional judgeship be created for this district. The Subcommittee agrees that current workload levels are too high for one judgeship and, therefore, recommends that one additional judgeship be created.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 1 **Total** 1

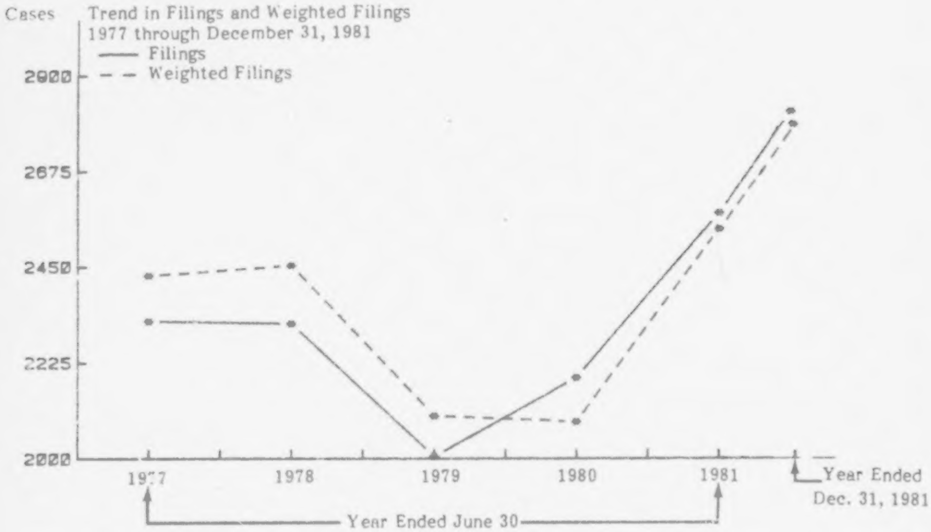
ELEVENTH CIRCUIT
United States District Courts

ALABAMA NORTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		2,820	2,596	2,206	2,019	2,336	2,350		
	Terminations		2,666	2,447	1,994	2,186	2,397	2,244		
	Pending		1,864	1,823	1,684	1,470	1,636	1,697		
	Percent Change in Total Filings Current Year	Over June ▶		9.0					32	4
		Over Earlier Years ▶			27.8	39.7	20.7	20.0	67	5
	Number of Judgeships		7	7	7	7	4	4		
	Vacant Judgeship Months		.0	.0	34.8	23.1	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	403	359	315	288	584	588	57	6
		Civil	364	330	277	241	452	444	55	6
		Criminal	39	39	38	47	132	144	44	5
	Pending Cases		266	250	241	210	409	424	84	9
	Weighted Filings		393	363	298	300	614	608	42	3
	Terminations		381	350	285	312	599	561	50	6
	Trials Completed		61	57	39	39	72	77	9	2
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	1.9	2.0	2.0	2.0	1.5	1.8	1	1
		Civil	6	7	7	7	8	8	8	1
	From Issue to Trial (Civil Only)		9	9	11	10	9	7	8	2
	Number (and %) of Civil Cases Over 3 Years Old		45 (2.6)	50 (2.9)	62 (4.0)	62 (4.6)	68 (4.6)	80 (5.2)		
TRIALS	TOTAL		430	402	274	272	289	306		
	10 - 19 Days		2	1	5	1	1	1		
	20 Days and Over		-	2	-	-	-	-		
OTHER	Number of Defendants Filed		370	391	372	457	677	768		
	Number of Diversity Cases Filed		766	715	697	606	620	597		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA - This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

The number of cases filed in this district in calendar year 1981 was 9.0 percent above the number filed during the year ended June 30, 1981. Filings per judgeship now total 403 with weighted filings slightly lower at 393. Much of the increase was in private civil rights cases, social security cases, and cases involving student loans and overpayments of VA benefits. With all seven judgeship positions filled in 1981, terminations were up to 381 per judgeship. The median time from filing to disposition of criminal cases ranked first in the country and civil cases were also disposed of quickly in this district. Civil cases over three years old represent less than 3 percent of the backlog. At 266 pending cases per judgeship, the backlog now ranks 84th among all district courts.

The district and the Eleventh Circuit Judicial Council have requested no additional judgeships and based on the current workload the Subcommittee recommends no additional judgeships.

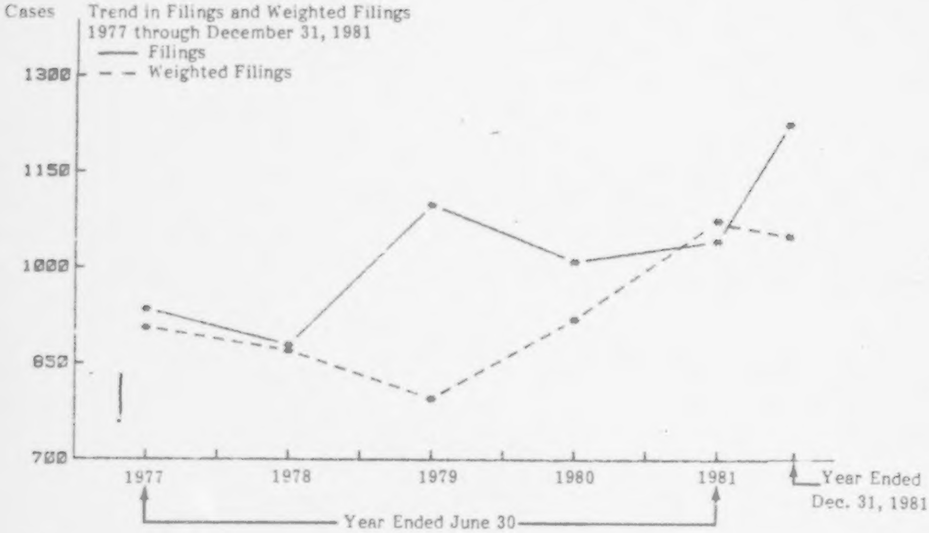
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

ALABAMA MIDDLE

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						[illegible]	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		1,230	1,048	1,017	1,102	888	940		
	Terminations		1,049	919	816	943	921	875		
	Pending		939	813	684	483	324	356		
	Percent Change in Total Filings Current Year	Over June ▶		17.4					11	1
		Over Earlier Years ▶			20.9	11.6	39.5	30.9	50	2
Number of Judgeships			3	3	3	3	2	2		
Vacant Judgeship Months			.0	3.2	21.4	7.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	410	349	339	367	444	470	56	5
		Civil	366	311	293	333	361	382	54	5
		Criminal	44	39	46	34	83	88	31	2
	Pending Cases		313	271	228	161	162	178	71	6
	Weighted Filings		348	359	307	266	435	452	63	7
	Terminations		350	306	272	314	461	438	64	7
	Trials Completed		53	50	28	43	79	64	17	4
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.6	2.7	2.1	2.5	1.4	2.2	5	2
		Civil	7	7	4	4	4	5	24	3
	From Issue to Trial (Civil Only)		5	5	6	4	3	4	2	1
	Number (and %) of Civil Cases Over 3 Years Old		15 (1.7)	15 (2.1)	17 (2.9)	21 (5.5)	17 (6.0)	14 (4.6)		
TRIALS	TOTAL		160	149	83	130	158	128		
	10 - 19 Days		-	1	1	-	-	-		
	20 Days and Over		-	-	-	1	-	-		
OTHER	Number of Defendants Filed		174	157	184	143	225	228		
	Number of Diversity Cases Filed		220	226	244	188	179	198		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 Recommended By Circuit Council 0

In calendar year 1981, there were 410 cases filed per judgeship, with weighted filings lower at 348. Much of the increase in the raw filings can be traced to low weighted civil rights actions filed by state prisoners. The number of trials completed per judgeship was 17th in the nation and the median times for civil and criminal cases were fast. Civil cases pending more than three years numbered only 15 which was less than 2.0 percent of the pending civil caseload. The district and Judicial Council requested no additional judgeships and the Subcommittee agrees that no additional judgeships are required.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 By Subcommittee in 1982 0 Total 0

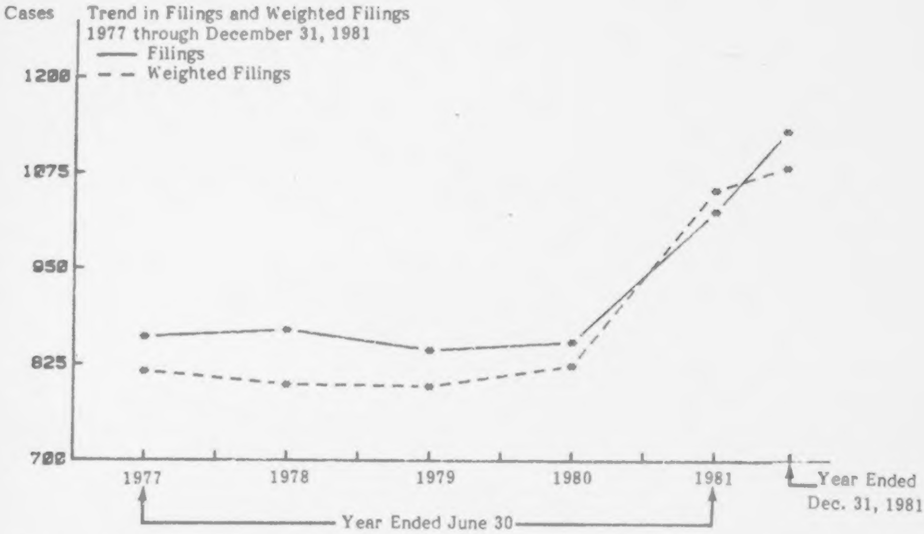
ALABAMA SOUTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

		TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings	1,134	1,028	859	849	871	867		
	Terminations	965	968	759	812	870	813		
	Pending	851	701	641	541	504	503		
	Percent Change in Total Filings Current Year — Over June ▶		10.3					29	3
	Over Earlier Years ▶			32.0	33.6	30.2	30.8	51	3
	Number of Judgeships	2	2	2	2	2	2		
	Vacant Judgeship Months	4.6	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS — Total	567	514	430	425	436	434	6	1
	FILINGS — Civil	524	478	397	380	382	351	7	1
	FILINGS — Criminal	43	36	33	45	54	83	33	3
	Pending Cases	426	351	321	271	252	252	42	3
	Weighted Filings	532	527	412	399	400	407	9	1
	Terminations	483	484	380	406	435	406	14	2
	Trials Completed	52	50	53	55	59	61	19	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition — Criminal	3.5	3.1	3.4	2.8	2.8	3.1	31	4
	From Filing to Disposition — Civil	7	7	7	6	7	6	24	3
	From Issue to Trial (Civil Only)	9	9	9	8	8	7	8	2
	Number (and %) of Civil Cases Over 3 Years Old	31 (3.9)	30 (4.5)	24 (3.9)	14 (2.7)	16 (3.5)	14 (3.2)		
TRIALS	TOTAL	104	119	106	109	117	122		
	10 - 19 Days	-	2	1	1	-	1		
	20 Days and Over	-	-	-	-	-	-		
OTHER	Number of Defendants Filed	143	131	124	139	135	293		
	Number of Diversity Cases Filed	294	317	262	232	210	172		
MDL	Dockets	NA	-	-	-	-	-		
	Cases Pending	NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.

ALABAMA SOUTHERN


Trend in Filings and Weighted Filings
1977 through December 31, 1981

ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 1

Total filings in calendar year 1981 rose to 1,134 or 10.3 percent more than the number of cases filed during the year ended June 30, 1981. This brought the total filings per judgeship up to 567 - the sixth highest in the nation. Weighted filings were slightly lower at 532 per judgeship, ranking ninth nationwide. With the help of senior judges and magistrates the district terminated 483 cases per judgeship in calendar year 1981. The number of trials completed was among the nation's highest at 52 per judgeship. Because of the age and health of its senior judges the district believes it cannot continue to rely on them to the same extent as in the past and has asked for one additional judgeship to handle the workload. The Eleventh Circuit Judicial Council has also recommended one additional judgeship for this district.

Redistributing the workload among three judgeships would result in 378 filings, 354 weighted filings and 284 pending cases per judgeship. On the basis of the current workload, the Subcommittee recommends one additional judgeship for this district.

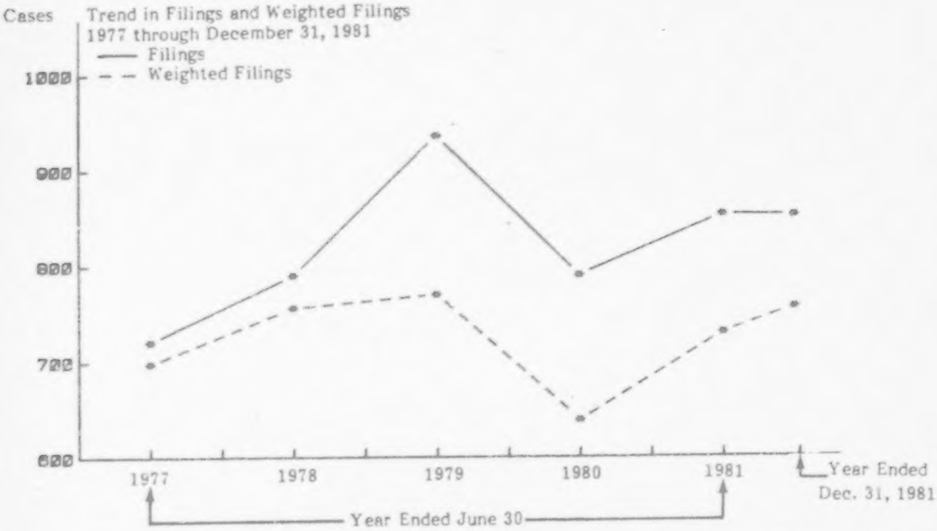
Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 1 **Total** 1

FLORIDA NORTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED							
			December 31	June 30					[illegible]	
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		858	859	792	945	798	731		
	Terminations		692	706	755	918	702	674		
	Pending		823	707	554	518	488	392		
	Percent Change in Total Filings Current Year	Over June ▶		-.1					76	8
		Over Earlier Years ▶			8.3	-9.2	7.5	17.4	71	7
	Number of Judgeships		3	3	3	3	2	2		
	Vacant Judgeship Months		9.6	3.5	3.4	7.7	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	286	286	264	315	399	366	86	9
		Civil	255	254	235	277	328	296	84	9
		Criminal	31	32	29	38	71	70	66	9
	Pending Cases		274	236	185	173	244	196	81	8
	Weighted Filings		251	244	213	256	378	350	84	9
	Terminations		231	235	252	306	351	337	89	9
	Trials Completed		39	39	41	34	41	51	49	7
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.4	4.1	3.7	3.2	3.4	3.6	66	6
		Civil	7	7	6	5	6	5	24	3
	From Issue to Trial (Civil Only)		16	14	16	-	-	12	49	7
	Number (and %) of Civil Cases Over 3 Years Old		29 (3.9)	22 (3.4)	17 (3.4)	13 (2.9)	10 (2.4)	3 (.9)		
TRIALS	TOTAL		117	118	123	102	82	101		
	10 - 19 Days		3	1	1	1	1	-		
	20 Days and Over		-	-	-	-	-	-		
OTHER	Number of Defendants Filed		242	265	130	166	182	206		
	Number of Diversity Cases Filed		121	99	106	97	107	84		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

In calendar year 1981, filings were nearly identical to the number filed during the year ended June 30, 1981. On a per judgeship basis, filings totaled 286 with weignted filings lower at 251. The pending caseload has grown in recent years but is still only 274 per judgeship. Three year old civil cases represent only 3.9 percent of this backlog. Median time for civil case disposition is low compared to other districts.

The district and Judicial Council have not requested additional judgeships and the Subcommittee recommends none.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

FLORIDA MIDDLE

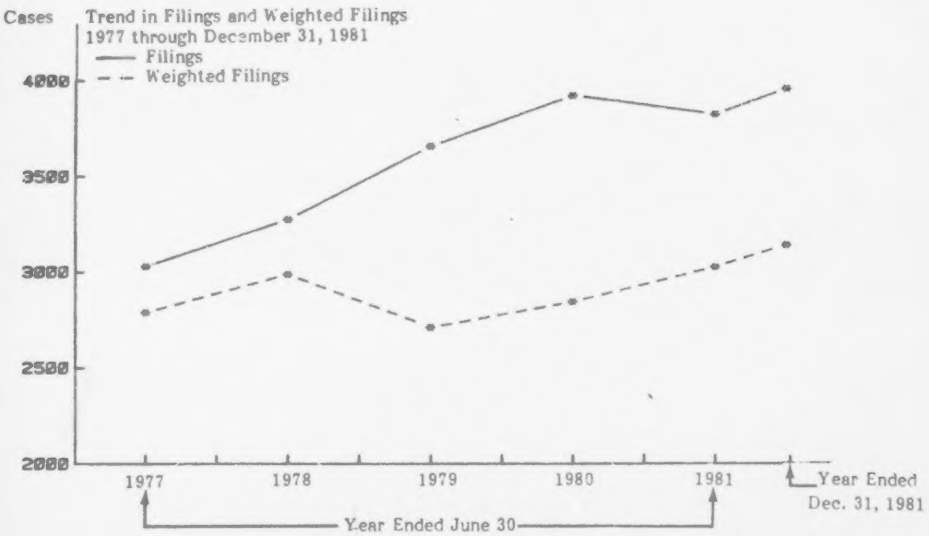
1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

		TWELVE MONTH PERIOD ENDED						[illegible]	
		December 31	June 30						
		1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings	3,973	3,836	3,948	3,682	3,328	3,084		
	Terminations	3,580	3,758	3,566	3,767	3,154	2,690		
	Pending	4,452	4,177	4,108	3,733	3,918	3,644		
	Percent Change in Total Filings Current Year	Over June ▶	3.6					59	6
		Over Earlier Years ▶		.6	7.9	19.4	28.8	55	4
	Number of Judgeships	9	9	9	9	6	6		
	Vacant Judgeship Months	13.8	12.0	16.1	23.1	6.2	17.0		
ACTIONS PER JUDGESHIP	FILINGS Total	441	426	439	409	555	514	41	4
	FILINGS Civil	404	392	402	371	465	433	36	4
	FILINGS Criminal	37	34	37	38	90	81	52	6
	Pending Cases	495	454	456	415	636	607	27	2
	Weighted Filings	346	336	316	302	498	465	65	8
	Terminations	398	419	396	419	526	449	41	5
	Trials Completed	35	36	34	34	46	46	60	9
MEDIAN TIMES (MONTHS)	From Filing to Disposition Criminal	4.4	4.6	4.3	4.0	3.6	4.2	66	6
	From Filing to Disposition Civil	10	9	8	9	10	8	66	8
	From Issue to Trial (Civil Only)	17	18	19	22	19	14	55	9
	Number (and %) of Civil Cases Over 3 Years Old	344 (8.1)	320 (8.0)	349 (8.9)	373 (10.5)	450 (12.7)	438 (13.0)		
TRIALS	TOTAL	317	320	303	310	276	274		
	10 - 19 Days	6	6	9	9	3	13		
	20 Days and Over	7	5	5	2	1	3		
OTHER	Number of Defendants Filed	579	503	527	566	747	725		
	Number of Diversity Cases Filed	517	471	375	349	304	325		
MDL	Dockets	NA	1	1	1	1	1		
	Cases Pending	NA	5	5	5	5	5		

NA – This information is compiled only for the year ended June 30.

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 2

FLORIDA MIDDLE



ANALYSIS

Additional Judgeships Requested: By District 1T **Recommended By Circuit Council** 1T

In calendar year 1981 filings totaled nearly 4,000 cases in this district. This resulted in 441 filings per judgeship with weighted filings substantially lower at 346. Nearly half of this caseload is made up of social security and prisoner petitions (which are routinely assigned to the magistrates) and cases involving the U. S. government's efforts to recover outstanding student loans. All of these cases require little involvement by judges and consequently are assigned low weights. This accounts for the large difference between the raw and weighted caseloads per judgeship.

The district has requested one temporary judgeship on the basis of the growing backlog of pending cases and the Eleventh Circuit Judicial Council agrees with that request. There are presently 495 pending cases per judgeship - 27th highest in the country. Prisoner petitions make up 33.0 percent of this district's backlog. Florida Middle's pending caseload does, of course, have many difficult types of cases including personal injury product liability cases, civil rights actions and copyright, patent and trademark cases.

The Subcommittee, however, does not feel that the existing pending caseload is excessive, especially in view of the fact that approximately one-third of it consists of prisoner petitions. The Subcommittee, therefore, recommends no additional judgeships.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

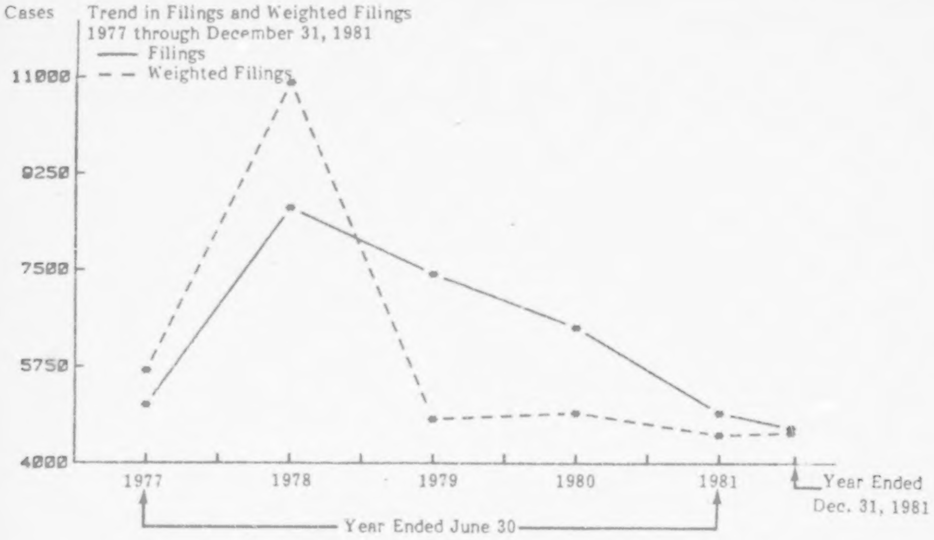
FLORIDA SOUTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	CIRCUIT
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		4,677	4,952	6,501	7,466	8,674	5,114		
	Terminations		6,934	6,696	6,919	5,223	4,412	3,141		
	Pending		7,818	8,746	10,479	10,905	8,661	4,399		
	Percent Change in Total Filings Current Year	Over June		-5.9					89	9
		Over Earlier Years			-28.1	-37.4	-46.1	-8.6	87	9
	Number of Judgeships		12	12	12	12	7	7		
	Vacant Judgeship Months		.0	.0	18.8	38.5	.0	11.4		
ACTIONS PER JUDGESHIP	FILINGS	Total	390	414	542	622	1,239	730	61	7
		Civil	330	352	491	575	1,157	615	67	7
		Criminal	60	52	51	47	82	115	11	1
	Pending Cases		652	729	873	909	1,237	628	9	1
	Weighted Filings		379	376	410	401	1,557	812	53	5
	Terminations		578	558	577	435	630	449	3	1
	Trials Completed		56	55	42	32	54	51	16	3
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	5.2	5.0	5.0	4.6	4.8	4.2	87	9
		Civil	7	8	6	6	6	5	24	3
	From Issue to Trial (Civil Only)		10	12	11	8	8	8	12	4
	Number (and %) of Civil Cases Over 3 Years Old		275 (7.0)	257 (7.2)	242 (7.6)	160 (5.6)	91 (3.7)	37 (1.8)		
TRIALS	TOTAL		674	662	503	379	380	356		
	10 - 19 Days		15	13	13	4	8	6		
	20 Days and Over		6	9	5	2	1	1		
OTHER	Number of Defendants Filed		1,714	1,856	1,233	1,072	963	1,248		
	Number of Diversity Cases Filed		686	662	568	493	504	557		
MDL	Dockets		NA	5	5	5	5	5		
	Cases Pending		NA	66	54	53	57	55		

NA – This information is compiled only for the year ended June 30.

FLORIDA SOUTHERN



ANALYSIS

Additional Judgeships Requested: By District 4&1T **Recommended By Circuit Council** 3

Case filings have fallen dramatically in this district in the last few years primarily because of the reduction in land condemnation filings. Approximately 40 percent of this district's large pending caseload is made up of land condemnation cases, many of which are part of the Big Cypress Project.

Per judgeship workload for calendar year 1981 shows 390 raw filings, 379 weighted filings, and 411 pending cases (excluding land condemnation cases). Although total filings have declined since 1978, criminal case filings have increased. This district has one of the largest criminal caseloads per judgeship and, on an average, each case involves 2.4 defendants, compared to the national average of 1.5 defendants per criminal case. Many of these criminal cases involve RICO or continuing criminal enterprise allegations; consequently they are complex and lengthy cases.

In 1980 the Judicial Conference recommended one permanent judgeship for this district on the basis of its weighted caseload and the large number of criminal defendants who go to trial, and a five year temporary judgeship to handle the substantial, but declining, land condemnation workload. At its March 1982 meeting, in response to the Department of Justice's advice that a special Vice-Presidential task force initiative against organized crime narcotics activities in the Miami area would generate a flood of additional criminal filings and trials, the Judicial Conference recommended that the judgeship bill currently pending in Congress be amended to include three permanent judgeships rather than one permanent and one temporary. The Conference acted upon a formal resolution offered by the Chief Judge of the Eleventh Circuit on behalf of the Judicial Council.

With three additional judgeships, current caseload figures would be 312 filings, 303 weighted filings, and 328 pending cases (excluding land condemnation). Based on these workload statistics it appears that the three judgeships already approved by the Judicial Conference will be sufficient for this district.

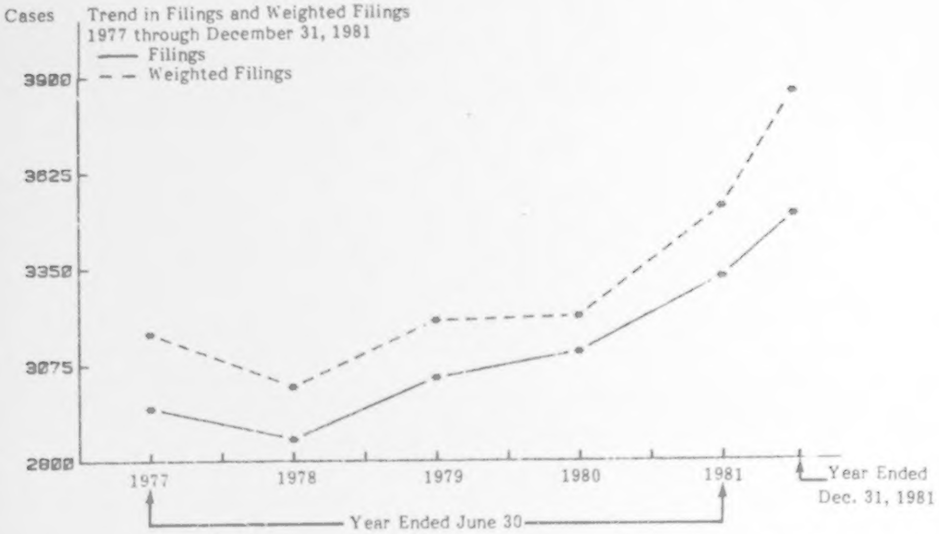
Additional Judgeships Recommended:
By Judicial Conference in 1982 3 **By Subcommittee in 1982** 0 **Total** 3

GEORGIA NORTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings		3,524	3,344	3,143	3,053	2,902	2,989		
	Terminations		3,303	3,411	3,134	2,898	2,787	2,840		
	Pending		3,165	2,935	3,000	2,994	2,839	2,722		
	Percent Change in Total Filings Current Year	Over June ▶		5.4					51	5
		Over Earlier Years ▶			12.1	15.4	21.4	17.9	69	6
	Number of Judgeships		11	11	11	11	6	6		
	Vacant Judgeship Months		4.0	.0	16.5	38.5	1.3	12.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	320	304	286	278	484	498	79	8
		Civil	286	275	259	253	418	413	79	8
		Criminal	34	29	27	25	66	85	58	7
	Pending Cases		288	257	273	272	473	454	79	7
	Weighted Filings		350	320	292	291	502	527	61	6
	Terminations		300	310	285	263	465	473	83	8
	Trials Completed		38	43	33	30	65	58	53	8
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.4	4.4	3.9	4.2	4.6	4.8	65	6
		Civil	10	11	10	9	11	9	65	8
	From Issue to Trial (Civil Only)		16	17	19	21	20	15	49	7
	Number (and %) of Civil Cases Over 3 Years Old		116 (3.9)	112 (4.0)	173 (6.1)	228 (8.0)	200 (7.6)	123 (5.0)		
TRIALS	TOTAL		421	472	368	331	391	345		
	10 - 19 Days		9	7	5	4	2	2		
	20 Days and Over		1	3	2	1	-	-		
OTHER	Number of Defendants Filed		534	433	457	366	487	753		
	Number of Diversity Cases Filed		1,076	907	817	809	752	752		
MDL	Dockets		NA	2	3	4	4	2		
	Cases Pending		NA	2	78	126	88	35		

NA – This information is compiled only for the year ended June 30.



ANALYSIS

Additional Judgeships Requested: By District 0 **Recommended By Circuit Council** 0

Total filings per judgeship in this district were 320 in calendar year 1981 and weighted filings were slightly higher at 350 per judgeship. On December 31, 1981, the pending caseload was only 288 per judgeship, 79th among all district courts. The number of civil cases over three years old is less than four percent of the backlog. The number of trials completed was only 38 per judgeship but there were several protracted trials.

The district and the Eleventh Circuit Judicial Council did not request additional judgeships and based on current workload levels the Subcommittee recommends none.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 **By Subcommittee in 1982** 0 **Total** 0

GEORGIA MIDDLE

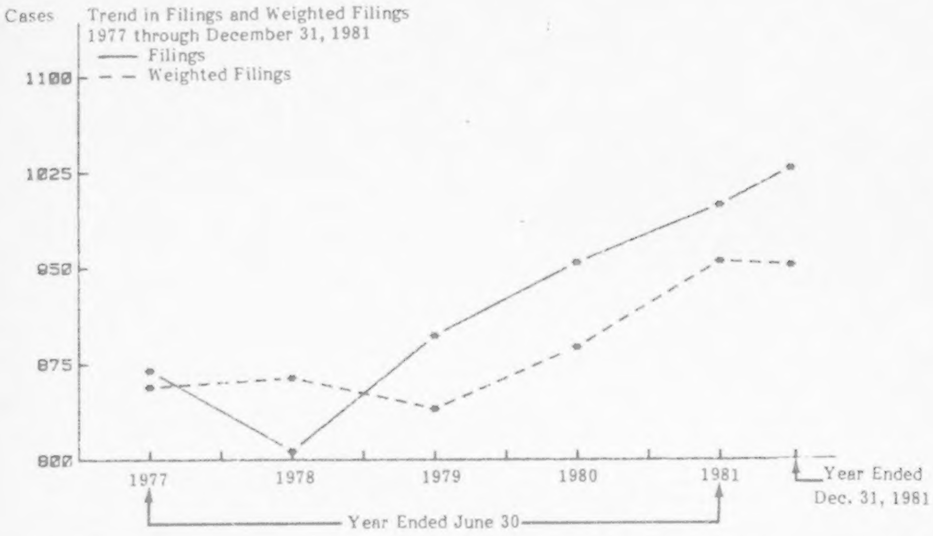
1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30						
			1981	1981	1980	1979	1978	1977	U.S.	CIRCUIT
OVERALL WORKLOAD STATISTICS	Filings		1,033	1,004	958	901	812	880		
	Terminations		900	986	865	880	771	812		
	Pending		841	709	691	598	577	536		
	Percent Change in Total Filings Current Year	Over June ▶		2.9					64	7
		Over Earlier Years ▶			7.8	14.7	27.2	17.4	71	7
	Number of Judgeships		2	2	2	2	2	2		
	Vacant Judgeship Months		.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	517	502	479	451	406	440	16	2
		Civil	475	452	439	414	339	324	18	2
		Criminal	42	50	40	37	67	116	36	4
	Pending Cases		421	355	346	299	289	268	44	4
	Weighted Filings		472	477	444	421	432	429	20	2
	Terminations		450	493	433	440	386	406	21	3
	Trials Completed		42	47	54	67	58	49	39	6
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.2	2.8	4.2	2.6	1.2	1.5	22	3
		Civil	6	6	6	5	8	6	8	1
	From Issue to Trial (Civil Only)		12	13	10	10	8	8	23	6
	Number (and %) of Civil Cases Over 3 Years Old		22 (2.8)	12 (1.8)	16 (2.5)	15 (2.7)	7 (1.3)	10 (2.1)		
TRIALS	TOTAL		84	93	108	134	116	97		
	10 - 19 Days		–	–	2	–	–	2		
	20 Days and Over		–	–	–	–	–	–		
OTHER	Number of Defendants Filed		135	124	125	109	188	279		
	Number of Diversity Cases Filed		278	233	237	208	227	210		
MDL	Dockets		NA	–	–	–	–	–		
	Cases Pending		NA	–	–	–	–	–		

NA – This information is compiled only for the year ended June 30.

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 2

GEORGIA MIDDLE



ANALYSIS

Additional Judgeships Requested: By District 1 **Recommended By Circuit Council** 1

Workload data for this district shows total case filings of 517 for each of the two judgeships, with weighted filings per judgeship of 472. Case terminations per judgeship have been much higher than the national average for the last four years. The termination rate, however, has not kept up with case filings and the number of pending cases has increased year after year. On December 31, 1981, there were 421 pending cases per judgeship. Despite the heavy workload and the more than average number of trials completed per judgeship, median times from filing to disposition of civil and criminal cases were among the best in the nation in 1981.

The Judicial Conference approved the district's request for an additional judgeship in 1980 based on the workload statistics. With three judgeships, total filings would drop to 344 per judgeship and weighted filings would be 314 per judgeship. The Eleventh Circuit Judicial Council has recommended the additional judgeship approved by the Judicial Conference and the Subcommittee concurs.

Additional Judgeships Recommended:
By Judicial Conference in 1980 1 **By Subcommittee in 1982** 0 **Total** 1

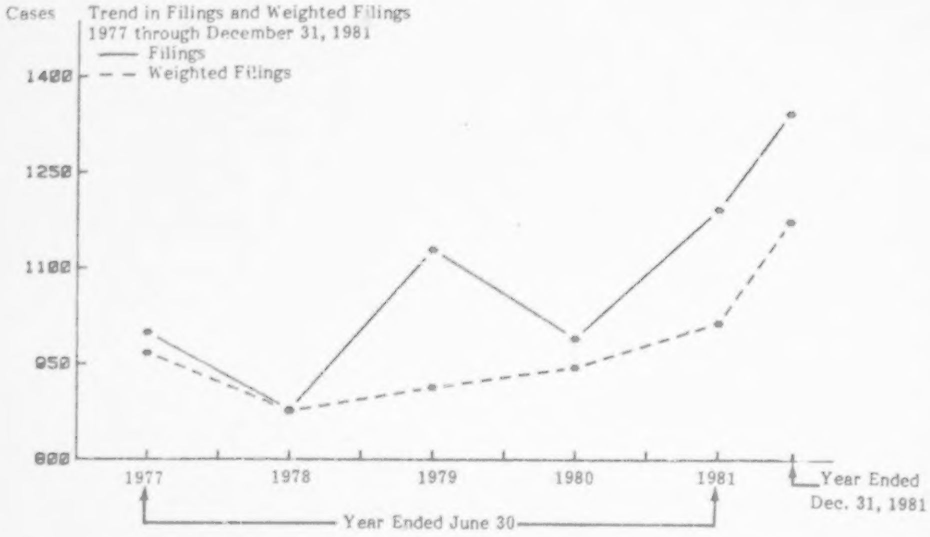
GEORGIA SOUTHERN

1982 BIENNIAL JUDGESHIP SURVEY
PAGE 1

			TWELVE MONTH PERIOD ENDED						NUMERICAL STANDING WITHIN	
			December 31	June 30					U.S.	CIR.
			1981	1981	1980	1979	1978	1977		
OVERALL WORKLOAD STATISTICS	Filings		1,347	1,195	993	1,132	888	1,008		
	Terminations		1,200	1,092	1,057	1,119	794	1,000		
	Pending		1,113	1,021	918	981	967	873		
	Percent Change in Total Filings Current Year	Over June ▶		12.7					24	2
		Over Earlier Years ▶			35.6	19.0	51.7	33.6	49	1
	Number of Judgeships		3	3	3	3	2	2		
	Vacant Judgeship Months		.0	.0	5.2	10.9	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	449	398	331	377	444	504	38	3
		Civil	416	376	300	336	369	395	32	3
		Criminal	33	22	31	41	75	109	60	8
	Pending Cases		371	340	306	327	484	436	56	5
	Weighted Filings		389	338	315	305	438	484	45	4
	Terminations		400	364	352	373	397	500	40	4
	Trials Completed		64	68	57	53	83	63	6	1
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.5	3.4	3.3	3.2	2.4	2.1	31	4
		Civil	7	7	9	9	8	9	24	3
	From Issue to Trial (Civil Only)		11	11	13	14	11	11	17	5
	Number (and %) of Civil Cases Over 3 Years Old		64 (6.0)	51 (6.2)	59 (6.7)	59 (6.2)	86 (9.5)	86 (10.8)		
TRIALS	TOTAL		192	203	171	159	165	125		
	10 - 19 Days		1	-	1	-	-	1		
	20 Days and Over		1	-	-	-	1	-		
OTHER	Number of Defendants Filed		191	132	119	199	217	274		
	Number of Diversity Cases Filed		368	344	285	246	262	258		
MDL	Dockets		NA	-	-	-	-	-		
	Cases Pending		NA	-	-	-	-	-		

NA – This information is compiled only for the year ended June 30.

GEORGIA SOUTHERN


Trend in Filings and Weighted Filings
1977 through December 31, 1981

ANALYSIS

Additional Judgeships Requested: By District 0 Recommended By Circuit Council 0

Case filings fluctuate greatly from year to year in this district; filings fell 12 percent from 1977 to 1978, rose 27 percent from 1978 to 1979, fell again (12 percent) between 1979 and 1980 and increased substantially in the last year and a half. Filings increased to 449 per judgeship in calendar year 1981 with weighted filings lower at 389 per judgeship. The pending caseload has grown over the last two years and now stands at 371 per judgeship.

Median times were efficient in this district in 1981, especially from issue to trial of civil cases, which at 11 months ranked 17th nationwide. Civil cases over three years old have held steady over the last three years and in calendar year 1981 represented 6.0 percent of the backlog. The 64 trials completed per judgeship was the sixth highest in the country, well above the national average. The district and Judicial Council have not requested any additional judgeships, and the Subcommittee agrees that none are required.

Additional Judgeships Recommended:
By Judicial Conference in 1980 0 By Subcommittee in 1982 0 Total 0

[Testimony of first panel resumes.]

Senator HEFLIN. I do not remember exactly what was asked, but I had a couple of more inquiries in mind, and then we have two other matters to bring up.

There is the issue of whether or not eventually you are going to have to have a permanent National Court of Appeals—maybe we are in a financial restraint period now, and you would have to go with some type of temporary mechanism, but eventually, if the workload of the Supreme Court continues, if litigation increases in the United States, we should keep in mind the question of whether or not any type of a temporary intercircuit panel should be designed with the idea of eventually making it into a permanent National Court of Appeals. If this is to be the case, what steps should be taken in the beginning which would lead to a better transitional period and a better transition into a permanent National Court of Appeals.

Dean Griswold and Professor Meador—I do not reckon Judge Bork wants to comment, since he does not agree on this, unless he wants to, and we will be delighted to hear from him.

Go ahead.

Mr. GRISWOLD. It is a little hard for me to respond when I do not know what the nature of the temporary step would be; some sort of an intercircuit panel. I stand by my main position, that I am in favor of doing anything in this area. Anything, it seems to me, would be a step forward. I would like to have us, if we get to the point where we finally conclude that we can take a step forward, to have it be a substantial one, one which certainly is not the last word that will ever be said, but which will provide a sound and solid and substantial foundation for future development. And starting out with something which is stated to be purely tentative and preliminary and temporary does not seem to me to provide a very solid and substantial foundation for future development.

So I would hope that in some form, we could produce a truly National Court of Appeals to improve our capacity to handle, on a nationwide basis, the appellate load of this enormous country.

As the chairman has said, a century of experience shows what the outside capacity of the Supreme Court is to handle cases. It has been pressing that capacity for the last 30 years. It is now extreme. The chairman gave the figure of 275 cases, but that does not give any weight at all to the fact that virtually every one of those cases is far more complex and far more difficult than were the cases which were the 275 of 1890 or of 1925 or of 1950.

I happened to be away on vacation the last 2 weeks of June this year, and I came back to my office with a stack of Supreme Court decisions decided in the last 3 weeks of the term, in the slip opinion form, which was 6 inches high. And then I started to read those cases because, professionally, I need to know what the Court has done, and that last group of cases which had been maturing in the Court through the spring were extraordinarily difficult, dealing with the extremely complicated statutory provisions enacted by the Congress and leading to sharp differences of opinion in the Court. And it is perfectly plain that the burden on the Court has become intolerable. They can control it by cutting down the number of cases which they will review, but that leaves the unresolved, inadequate appellate capacity of the country still to be dealt with, and that is something which, it seems to me, S. 2035 could make an opening contribution to.

Senator HEFLIN. Professor Meador, do you want to comment on that?

Professor MEADOR. I would simply add this. It seems to me there is a distinction between the question of a permanent court on the one hand, and permanent judgeships on the other. I think this court could be created, and indeed, I would favor creating it as a permanent court, but I would also favor having the court manned by circuit judges sitting by assignment. My main reason for that is that it gives a mechanism for assuring that this court stays in congruence with the Supreme Court. It does not absolutely guarantee it, but I think it gives a greater assurance that if the Supreme Court itself can have a hand in making these designations from time to time, you are more likely to get a forum that will reflect the Supreme Court's own views—not perfectly, but to a high degree. I think the success of the new Court will be dependent, at least in part, on the Supreme Court's having confidence in it. This gets back to Judge Bork's point, that if the Supreme Court is going to be looking over the new court's shoulder, taking up cases all along, then it may fail of its purpose. But one way to try to achieve confidence is to have judges that can be selected by the Supreme Court, albeit, though, for turns.

What must be avoided, in my judgment, is an ever-shifting group of judges that simply takes up to another level the present instability we have in the courts of appeals.

Senator HEFLIN. Well, thank you, gentlemen. We appreciate your testimony. If you want to make any additional comments on this. feel free to submit them to us, and we would be delighted to have it.

[The prepared statement and additional submission of Professor Meador follow:]

Statement of

DANIEL J. MEADOR

James Monroe Professor of Law

University of Virginia

Mr. Chairman and Members of the Subcommittee:

It is an honor to appear here to respond to the Subcommittee's request that I present my views on S. 2035. That bill would create a new appellate court to be known as the National Court of Appeals and it would create a new federal judicial official bearing the title of "Chancellor." I endorse both of these objectives, and I commend the Subcommittee for its continued effort to equip the federal judiciary to discharge its functions effectively.

In view of the past extensive discussion on the proposal for a new appellate court, I will avoid much of the statistical data and will not repeat all of the arguments in favor of establishing a court. Instead, I will undertake to make some observations concerning the nature of the problems and the remedies and to set forth some ideas for achieving the objectives of S. 2035. In general, I share the views expressed at the hearing on S. 1529 before this Subcommittee on November 16, 1981, by former Senator Roman Hruska, Shirley Hufstedler, A. Leo Levin, James Duke Cameron, and John H. Pickering (presenting the views of John P. Frank, Clement F. Haynsworth, Jr., and Erwin N. Griswold).

The Two Problems

Two serious and ever-worsening problems beset the federal judiciary at its appellate levels. The problems are related and overlapping; yet they have distinctive features, and a remedy for one is not necessarily a remedy for the other. Devising sound solutions requires that the problems be analyzed separately.

One problem is the overload on the Supreme Court. The business flowing to that Court annually outstrips the capacity of a single appellate tribunal; the Court, institutionally, despite heroic efforts, simply cannot keep up with the volume of work. The other related yet distinct problem is the lack of appellate capacity in the federal judicial system as a whole. With its present structure and volume of business, the system is unable to produce a sufficient number of definitive decisions on federal law questions to eliminate uncertainties and to resolve conflicts among the lower courts.

Each of these problems has the same root cause: an extraordinarily high volume of litigation. The federal judicial structure is being subjected to several times the number of cases it is presently equipped to accommodate. Growth continues annually, and there are no predictions of leveling off or diminution. There is also little prospect of new legislation or social developments that will serve to diminish the volume. Hence measures are necessary to redesign the federal judicial structure to cope with the present and projected volume. Specifically, at the appellate levels measures must be adopted that enable the system to render definitive decisions within a reasonable time and enable the Supreme Court to resolve the nation's most important legal questions through deliberative judicial process.

Both of the difficulties afflicting the appellate levels of the system are so well known and have been so thoroughly discussed that little new can be said about them. It is important, however, to keep in mind the distinctive features of the two problems.

The Supreme Court Overload. Partly because of the "one Supreme Court" language of Article III and partly because of the common sense view that the nation's top court should always sit as a unit, the Supreme Court functions in all of its decisions on the merits with its full complement of nine justices. The Court has functioned in this manner with this number of justices for over 100 years. There is no disposition to alter this arrangement. Accordingly, the challenge is to arrange the system to channel to that court of last resort no more business than nine justices can deal with through a rational and contemplative decisional process under contemporary circumstances.

The Court is no longer able to deal with its business in this fashion. Indeed, for at least a decade or more the burden upon the Court has been beyond the tolerable point. In 1960, with 1,940 filings during the year and 132 opinions on the merits, the nine justices were well occupied; no one thought at that time that they were under-used. The early 1960's was perhaps the last period in which the Court's processes were not overtaxed. In 1970, there were 3,419 filings, with 148 opinions rendered. In 1980 there were 4,177 filings, with 159 opinions issued.

Although in past years some justices expressed the view that the Court was not being pressed beyond its resources, one hears none of that now. Within the past two months five members of the Court have spoken publicly on the matter--Justices Brennan, White, Marshall, Powell, and Stevens. Although addressing different aspects of the problem and differing as to the precise remedy, each has revealed the realization that the court is overrun with business. Justice Stevens voiced openly what many have long believed or suspected, namely, that increasing reliance is being placed upon law clerks and that indeed he is unable himself to look at all certiorari petitions.

To remedy the situation, some new structural and jurisdictional arrangements must be devised to reduce the hydraulic pressure being churned up from the lower courts, and thereby reduce the Supreme Court's intake.

The Lack of Appellate Capacity. This problem is related to the foregoing in that if the Supreme Court had capacity for additional cases the system might not, as a whole, lack sufficient appellate capacity to deliver definitive decisions across the whole range of federal law. Moreover, it is theoretically possible to remedy the Supreme Court's overload without providing additional appellate capacity for the system as a whole.

The lack of appellate capacity comes about through a combination of circumstances. All of them stem ultimately from the enormous growth of litigation in the federal courts. As a result of that growth, more appeals are coming to the regional appellate courts. Indeed, appellate growth has far outstripped trial court growth: from 1961 to 1981 appellate filings in the U.S. courts of appeals rose by 527 percent, while filings in the district courts rose by only 136 percent. To meet this burgeoning caseload, Congress in 1978 increased the number of courts of appeals judgeships from 97 to 132. This step was essential to enable these appellate courts to deal with the quantity of appeals. However, as is often true in judicial improvement measures, a step taken to meet one problem worsens another, and that is what happened here. The increase in the number of judgeships set the stage for greater uncertainty and unevenness in federal law because it resulted in a larger number of three-judge decisional units. The more decisional units there are at the intermediate appellate level the greater is the probability of conflicting or near conflicting decisions and unpredictability of appellate outcomes.

The number of courts of appeals has also increased. There are now 12 territorial circuits--the 11 numbered circuits and the District of Columbia circuit. Commencing on October 1, 1982, there will be one additional circuit--the United States Court of Appeals for the Federal Circuit--organized on a subject matter basis. Thus a total of 13 different courts of appeals will be deciding questions of federal law.

In theory, each of these courts of appeals should speak consistently. That is, under the present judicial structure there should be only 13 appellate forums rendering federal law interpretations. However, in reality that is not the situation because the en banc hearing has lost its efficacy. The growth in the number of judges and the number of appeals has caused the courts of appeals to avoid en banc proceedings because of their substantial drain on judicial time. Thus, the constantly shifting three-judge panels have assumed increasing autonomy, and there are many more of them than previously.

The upshot is that we have more courts of appeals and more three-judge panels now rendering decisions, a greater number of appellate decisions being rendered, less effective en banc procedures to iron out internal conflicts, and the single, over-burdened nine-justice Supreme Court as the only device at the top to maintain nationwide coherence amidst this multitude of judicial pronouncements. After October 1, 1982 the U.S. Court of Appeals for the Federal Circuit will have jurisdiction to render decisions in patent appeals from the district courts and in a few other categories of cases on a nationwide basis, but this will be only a slight amelioration of the system-wide difficulties.

It is possible to devise a solution to the present lack of appellate capacity at the top of the system and yet not substantially remedy the problem of the overburden on the Supreme Court. What should be sought is a means of remedying both problems at the same time.

A Decade's Consensus

For a decade now the two problems described above have been the subject of study, debate, and writing. Two official bodies have addressed these problems: the Freund Committee in 1972 and the Hruska Commission in 1975. Other organizations have also addressed the problems, including the Advisory Council for Appellate Justice and the American Bar Association. Numerous lawyers, judges, and law professors individually have spoken and written on the subject. Out of this welter of consideration a consensus has emerged around certain points.

A survey of all of the studies and writings reveals that there is now virtually no dissent to the proposition that the Supreme Court is taxed beyond its reasonable capacity and that the federal judicial system as a whole lacks capacity at the appellate level to render an adequate number of clarifying decisions having nationwide binding effect. These twin problems are now widely recognized by knowledgeable people, and there is widespread belief that there is a clear need to do something about them promptly.

There is a further consensus that the most appropriate solution to the problem of lack of appellate capacity lies in the creation of a new appellate court that would be superior to the existing courts of appeals but inferior to the Supreme Court.[1] Such a new appellate tribunal would have a capacity to decide perhaps 150 to 200 cases annually on the merits, clarifying questions of federal law and resolving conflicts or near conflicts that the Supreme Court is simply unable to address because of its overload. This proposed new court, first suggested by the Hruska Commission, is usually referred to as the "National Court of Appeals," but for reasons to be mentioned later, might be more appropriately called the "Inter-Circuit Court of Appeals."

---

[1] A list of published articles explaining the need for a new court and endorsing the concept of a reference jurisdiction is attached to this statement.

Furthermore, there is a consensus that this new appellate tribunal should be a court to which the Supreme Court could refer cases for decision. This is the so-called 'reference" jurisdiction. The creation of a new court with such jurisdiction was the central recommendation of the Hruska Commission. That recommendation has been widely endorsed. Indeed, there is such a high degree of agreement on this matter across both major political parties and among knowledgeable persons of varying philosophical stances that Congress can readily act to implement this proposal.

Composition of the New Appellate Court

In designing the composition of the new appellate court, there are two approaches: one is that such a new court should be permanent and have permanent judges of its own; the other is that the court should be composed of existing U.S. circuit judges sitting by designation. S. 2035 embodies the latter approach; S. 1529 embodies the former.

A court consisting of U.S. circuit judges sitting by designation is preferable for several reasons. One is cost. To the extent that the circuit judges designated are in senior status there is no added expense to the judicial system and little drain on the active judicial manpower of the existing courts of appeals. Another is that the use of existing judges avoids the problem, bothersome to some, of having a single President appoint on a permanent basis an entire new complement of judges at an important appellate level. Still another reason is that the insertion of a new court of this kind into the federal structure is a novel step that may or may not work well. In other words, it is experimental. Thus it is desirable to create the court in a way that will enable it to be easily discontinued with minimum disruption, if that should later seem desirable. Having the court manned by existing circuit judges would make a termination easy; the judges would simply return to their original courts of appeals, and the new court would cease to function.

Assuming that the new appellate court is to be composed of circuit judges sitting by designation, several related questions must be resolved: how many judges should compose the court, what circuit judges are eligible to serve, how are they to be selected, and for what periods of time are they to serve.

The purpose of the court provides answers to these questions. The court is intended to provide an appellate forum that will render decisions of nationwide precedential value heightening the clarity and uniformity of federal law. To achieve this purpose, stability and continuity are essential in the court's composition and decision-making. Maximum stability in any appellate forum is achieved by all of the court's judges' sitting on every case and by a continuity of membership over a substantial period of time. If the court sits in panels--that is, if it decides cases through groups of judges smaller than its entire membership--stability is undermined. If the court's membership changes frequently, its stability is undermined and the law made less predictable. Indeed, numerous and ever-shifting panels of three among the existing courts of appeals are the root of much of the uncertainty and unevenness in federal law today. Thus the new federal appellate tribunal should consist of a group of judges no larger than can function effectively en banc in all cases, and its membership should not shift frequently.

These objectives can be achieved by providing that the court shall consist of nine judges designated for a period of six years each. The initial designations should be for staggered terms so that every two years the terms of three judges will expire. Moreover, judges should be eligible for redesignation. All nine judges should sit en banc in every case in which a decision is being rendered on the merits. Such an arrangement would provide an appellate forum of maximum coherence and stability and would provide the greatest assurance that the purpose of the court would be achieved.

The judges designated to sit on the new appellate court should be seasoned and well-experienced as appellate judges in the federal system. This suggests that some minimum length of service be required. S. 2035 provides that seven years of service is necessary to render a judge eligible for designation to the new court. That may be a bit more than is necessary; five years seems sufficient to assure the necessary experience. The five-year minimum would also provide a somewhat larger pool of eligible judges and would make it possible to involve the services of somewhat younger judges. Senior circuit judges should also be eligible to sit. A substantial reservoir of experienced and able judicial talent can be found among senior circuit judges. Although S. 2035 provides that no judge beyond the age of 70 can sit on the court, such an age limitation seems undesirable. The ability of a senior judge to function effectively on the court could be determined by the selecting authorities; many of our best appellate judges are beyond the age of 70 and are still vigorous.

In deciding where to place the power to designate judges to sit on the new court Congress should again keep in mind the purpose of the court. Its purpose is to enlarge the appellate capacity of the federal judicial system while to the maximum extent possible avoiding the interposing of an additional judicial level that would simply be a way station en route to the Supreme Court. This purpose can be achieved best if this appellate court mirrors to a high degree the jurisprudential and legal stance of the Supreme Court itself. The more nearly the new court reflects the Supreme Court's views on the whole range of federal legal questions, the fewer occasions there will be for the Supreme Court to review decisions of the new court. Conversely, the less like the Supreme Court the new tribunal is the more frequent the occasions will be on which the Supreme Court will feel compelled to take up decisions of the new appellate court for further review. The way to structure an appellate forum of designated circuit judges that will most likely render decisions faithfully reflecting those the Supreme Court itself would render is to provide that the Supreme Court have a hand in selecting those judges.

The Supreme Court is in an excellent position to assess the qualifications and jurisprudential approaches of the circuit judges throughout the country because it regularly reviews their decisions. While the Court's collective judgment would be insurance that the new court would match the Supreme Court's legal outlook, there is also need for a more efficient mechanism to identify suitable circuit judges. The Chief Justice traditionally has selected federal judges to sit on various courts outside their own. In terms of administrative efficiency it makes sense to call on the Chief Justice's experience; there is also much to be said for giving one official primary responsibility rather than having it placed generally in a group of nine. The advantages of that arrangement and the values of the Supreme Court's collective judgment can be melded by a provision that the judges shall be designated by the Chief Justice with the concurrence of the Supreme Court.

The name "National Court of Appeals" used by the Hruska Commission and in S. 1529 was appropriate since the court proposed was to be a permanent court composed of its own permanent judges. However, if the court is to be composed of existing circuit judges sitting by designation--the concept embodied in S. 2035--a more appropriate name would be "Inter-Circuit Court of Appeals." This title for a court composed in this fashion has been advanced by A. Leo Levin, Director of the Federal Judicial Center, and the former Executive Director of the Hruska Commission.[2] This name does capture more accurately the nature and composition of the proposed court, and it is referred to by that name hereafter.

Jurisdiction of the Inter-Circuit Court of Appeals

Reference jurisdiction. That the new appellate court should have jurisdiction to decide cases referred to it by the Supreme Court is generally agreed. In this role the court would be functioning, in effect, as an overflow chamber for the Supreme Court. That is, it would provide the system with appellate capacity beyond the capacity available in the Supreme Court. Estimates vary, but there is widespread agreement that each year there are numerous cases that deserve authoritative decision at the top of the judicial system but which the Supreme Court simply does not have time to reach. Evidence of this is provided in the report of the Hruska Commission, in statements from the Supreme Court justices themselves, in testimony at the November 1981 hearing, and from writings over the last decade.

---

[2] Levin, Adding Appellate Capacity to the Federal System: A National Court of Appeals or an Inter-Circuit Tribunal, 39 Wash. & Lee L. Rev. 1 (1982). The "Inter-Circuit" title is used in H.R. 4762, currently pending in the House of Representatives.

The idea of such an overflow chamber to augment the appellate capacity at the top of a judicial system is neither novel nor untried. Three states have created such an appellate forum since 1970: Oklahoma, Massachusetts, and Iowa.[3] In Iowa and Oklahoma the appellate court receives its cases solely by reference from the state's supreme court; in Massachusetts, the appellate court also receives certain appeals directly from trial courts in addition to those received on reference from the state supreme court.

With the creation of an inter-circuit court of appeals having reference jurisdiction, the Supreme Court should have the following range of options in disposing of petitions for certiorari and statements of probable jurisdiction in appeals:

(1) Deny certiorari or dismiss the appeal, thereby terminating the litigation altogether;

(2) grant certiorari or note probable jurisdiction, and retain the case on the Supreme Court's docket for its decision on the merits;

(3) grant certiorari or note probable jurisdiction and refer the case to the appellate court for decision on the merits;

(4) refer the case to the appellate court for the latter's determination whether to grant certiorari or note probable jurisdiction with directions to decide the case on the merits if certiorari is granted or probable jurisdiction is noted. The Supreme Court should be authorized to refer cases to the appellate court

---

[3] Okla. Stat. Ann. tit. 20 § 30.1 (West Supp. 1981-82); Mass. Gen. Laws Ann. ch. 211A §§ 5, 10 (West Supp. 1982-83); Iowa Code § 684.35, 684.1(2) (1979).

for this purpose on a case-by-case basis or by categories. The Supreme Court may find it useful to specify by rule that certain types of cases should go automatically to the appellate court without the necessity of a case-by-case examination.

This array of options would give maximum flexibility to the Supreme Court to manage its docket in a way that is most helpful to the system, that is, in the way that provides maximum appellate capacity through the use of the new court and permits the Supreme Court to perform its case-deciding function on the merits in the most effective way. The court could readjust its procedures from time to time as the nature and volume of business required.

The question remains as to the Supreme Court's role in cases after they are referred to the Inter-Circuit Court of Appeals. One lesson learned since the publication of the Freund Committee report is that the bench and bar generally disfavor proposals to close off access to the Supreme Court for cases decided in the courts of appeals and in the state supreme courts where there is a controlling federal question. Thus the statute should provide that any case in the new appellate court may be reviewed by the Supreme Court by writ of certiorari. The expectation is that the Supreme Court would grant review in very few cases. If the new appellate court is soundly structured and is manned by able, respected circuit judges, the Supreme Court will be able to rely with a high degree of confidence on that court's dispositions. There is general agreement that the Supreme Court should not be absolutely cut off from reviewing cases dealt with in the appellate court.

Creating an appellate court with such reference jurisdiction would be a large and significant step toward providing the federal judicial system with the kind of appellate capacity that it so seriously lacks at present. However, this arrangement would not be a complete remedy for the overload on the Supreme Court itself. For that another remedy is needed. While it is dealing with these problems, Congress should make every effort to deal with both at once. To that end the following suggestion is made for additional jurisdiction in the new appellate court.

Direct appellate jurisdiction. The same tribunal created to enlarge the unifying and conflicts-resolving capacity of the federal appellate system can also be used to scale back the Supreme Court's work to manageable proportions. The Freund Committee's report was the one major effort directed to getting the Supreme Court's workload back under control; it failed because of a fatal flaw in its proposal: it would have shut off the Supreme Court absolutely from considering large numbers of cases in which review was sought. This points up the dilemma of any effort to regain control over the Supreme Court's docket: on the one hand there is a deeply held view that the Supreme Court should not be absolutely cut off from cases containing controlling issues of federal law; on the other hand, it has to be recognized that the Supreme Court's docket cannot be controlled unless there is some effective filtering or screening mechanism that will, as a practical matter, lessen the input to the Supreme Court.

Such practical finality can be achieved by a carefully designed routing of certain cases in the first instance to the Inter-Circuit Court of Appeals. At the November 16, 1981 hearing, proposals to this effect were advanced in the joint statement of John P. Frank, Judge Clement F. Haynsworth, Jr., and Erwin N. Griswold and by the testimony of Justice James Duke Cameron.[4] Although there may be variations in detail, the essence of their idea is that cases coming from the state courts (containing controlling federal law issues) should come initially to the new appellate court. I endorse that idea and urge its consideration for the reasons advanced by these distinguished judges and lawyers at the previous hearing. I would include cases coming from the District of Columbia and the Commonwealth of Puerto Rico. All such review in the Inter-

---

[4] Proposals along this line had been made previously by two of these witnesses. See Haynsworth, Improving the Handling of Criminal Cases in the Federal Appellate System, 59 Cornell L. Rev 597 (1974); Cameron, Federal Review, Finality of State Court Decisions, and a Proposal for a National Court of Appeals - a State Judge's Solution to a Continuing Problem, 1981 B.Y.U. L. Rev. 5.

Circuit Court of Appeals would be on a certiorari basis--that is, the court would first consider the cases on certiorari petitions, invoking its discretion, and would decide the cases on the merits only after granting certiorari, in the style of the present Supreme Court certiorari practice.

The volume of business that such jurisdiction would produce annually for the Inter-Circuit Court of Appeals can be estimated from the current volume of Supreme Court filings in those cases. According to the Clerk of the Supreme Court, during the 1981 Term review was sought in a total of 1,255 cases (out of a total of 4,417 filings) from all of the 50 state court systems, the District of Columbia, and Puerto Rico. Under this proposal, all of those cases would be taken on a certiorari basis to the Inter-Circuit Court. If the new appellate court granted certiorari in seven percent of those cases (approximately twice the rate of certiorari grants in recent years), it would have an annual docket of approximately 88 of those cases for decisions on the merits. If one assumes that the new court could decide as many as 200 cases on the merits annually, it would have room for approximately 112 cases annually referred to it by the Supreme Court for decision on the merits. As a nine-judge body, the new court would also have capacity to pass on a substantial number of certiorari petitions referred to it for its discretionary action by the Supreme Court. In acting on certiorari petitions, the court should be authorized to function through five-judge panels.

A new appellate tribunal of this kind would thus be a blend of a court with reference jurisdiction and a court with some direct appellate jurisdiction. This is not a wholly novel arrangement. In Massachusetts, one of the three states having intermediate appellate courts with reference jurisdiction from the state supreme court, the appellate court also entertains specified appeals from lower tribunals.

The legitimacy and possible desirability of providing for federal review of state court decisions by federal courts inferior to the Supreme Court were foreshadowed even before the ratification of the Constitution. In the 82nd Federalist James Madison, after analyzing the point, concluded:

> . . . I perceive at present no impediment to the establishment of an appeal from the state courts, to the subordinate national tribunals; and many advantages attending the power of doing it may be imagined. It would diminish the motives to the multiplication of federal courts, and would admit of arrangements calculated to contract the appellate jurisdiction of the supreme court.

The need for and benefits to be derived from a federal appellate forum short of the Supreme Court to evaluate state cases on federal law points have grown with the growth of federal law. Until the last two decades federal law played a relatively small part in the decisions of state supreme courts. Now it has become much more prominent, a reflection of the increased pervasiveness of federal law in all of American life and litigation. In an effort to determine the extent of federal law involvement in state court litigation, a study was commissioned by the Federal Justice Research Program in the Department of Justice. The report produced in that study (conducted by the National Center for State Courts) was made available in 1981. The study examined decisions of state supreme courts in four states--California, Illinois, Connecticut, and Virginia--for the years 1959 and 1979. Overall, federal law was involved in 14.3% of the decisions of those four state supreme courts in 1959; in 1979, federal law was involved in 41.6%. Not surprisingly, the most substantial increase came in criminal cases. In 1959, federal law was involved in 21.8% of criminal cases decided by the state supreme courts; by 1979 the figure had risen to 72.1%. A copy of this study is attached to this statement. These figures do not mean that this percentage of state cases would be federally reviewable; although involved in the cases, federal law is not necessarily controlling in them all.

Thus, while the United States Supreme Court has always been at the apex of the many state judicial systems, sitting there to provide final resolution of federal questions on which the state supreme court decisions turn, not until recent times have those state decisions formed any large quantity of potential business for the Supreme Court. Now, however, with the significant increase of federal law in those cases, the potential pool of business for the U.S. Supreme Court has grown enormously, along with the growth of business being generated in the lower federal courts. Yet the Supreme Court's role in relation to the state courts is quite different from its role in relation to the lower federal courts. In the federal judicial system, the Supreme Court is the apex of that particular judicial pyramid, with supervisory powers over all of the U.S. courts of appeals and the U.S. district courts; it has a special responsibility to see to the maintenance of that system and to the even-handed application of federal law throughout the lower federal court system. In contrast, the only role of the top federal appellate court in relation to the state judicial systems is to see to it that those state systems apply federal law accurately and uniformly amidst the much greater mass of state law for which those courts are primarily responsible. Thus state court cases seem natural candidates to route in the first instance to the Inter-Circuit Court of Appeals, leaving the Supreme Court freer to deal with the subjects of its primary concern--federal judicial business. State case access to the Supreme Court is not to be closed off; the impact of state cases, however, would be tempered and greatly lessened by the refinement and evaluation given them by the able circuit judges constituting the new appellate court.

Direct appellate jurisdiction over state criminal cases would produce another substantial benefit for the justice system. It would provide a means for bringing to the criminal process a measure of finality that has been badly lacking over the last two decades. A major reason for the blossoming of federal collateral review--that is, habeas corpus review of state convictions in the federal district courts--has been the lack of availability of effective federal appellate reveiw. Because of the Supreme Court overload, direct review of state criminal cases in the Supreme Court has not been a viable option, as a practical matter, for a long time; hence, federal district courts have been opened wide to entertain state criminal cases through the medium of habeas corpus. Routing state criminal cases for direct review in the new appellate court could provide a meaningful federal appellate scrutiny. That review should be broad and searching, affirmatively identifying and resolving all possible federal questions concerning the conviction and sentence. Following such an appellate review, collateral review in federal district courts would become unnecessary in a large percentage of all cases; it would remain available, however, for the occasional egregious miscarriage of justice in the state's criminal process that could not have been corrected on the appellate review. Indeed, providing direct federal appellate review may, in the long run, be the best answer to the unseemly and overdone district court involvement in the state criminal process. The reasons for this were well-stated at the November 1981 hearing.

Chancellor of the United States Courts

S. 2035 would create a new federal judicial office to be known as "Chancellor of the United States." Under the provisions of this bill, the Chancellor would have a dual responsibility: he would be the presiding judge of the National Court of Appeals, and, in addition he would be charged with any administrative responsibilities concerning the federal judicial system that the Chief Justice would assign him. In the latter role the office holds potential to bring substantial benefit to the federal judiciary.

The federal judicial system as a whole has grown in structure, personnel, budget, and business at an unprecedented rate over the last 20 years. There are three different bodies charged by statute with administrative functions concerning this system nationwide: the Judicial Conference of the United States, the Administrative Office of the United States Courts, and the Federal Judicial Center. The Chief Justice of the United States has numerous statutory duties relating to system-wide administration of the federal judiciary. In the absence of any other single official charged with administering the entire system, the Chief Justice has by necessity assumed an ever-increasing administrative role. The conditions in the federal judiciary and the administrative burdens they place on the Chief Justice have been described in detail by me in an article entitled "The Federal Judiciary and Its Future Administration," 65 Va. L. Rev. 1031 (1979).

The present holder of the office has worked valiantly to discharge these responsibilities. It is fortunate for the judiciary that the incumbent has sufficient energy, interest, and ability to handle the system-wide administrative responsibilities in addition to serving as one of the nine justices of the Supreme Court and that Court's presiding judge and chief administrative officer. It is unrealistic, however, to expect that every future Chief Justice will always have the requisite energy, interest, and ability to perform these multiple functions as effectively.

It is clear that the time has come to provide an additional administrative official to assist the Chief Justice in coordinating, planning, directing, and operating the nationwide judicial system. The proposal in S. 2035 in this respect is thus a move in the right direction.

A statute should provide for a new judicial official empowered to exercise all present administrative responsibilities of the Chief Justice to the extent that they are delegated to him by the Chief Justice. In addition, however, this official--administratively subordinate only to the Chief Justice--should be directly authorized by statute to perform certain significant administrative duties such as making inter-circuit assignments of judges, presiding over the Judicial Conference and overseeing the work of its committees, and communicating to the other branches of government on behalf of the judiciary. He should report to the Chief Justice and be subject to the Chief Justice's administrative direction.

Such an official should be an Article III judge. This is necessary in order that he be clothed with judicial power insofar as such power may be necessary to some of his administrative or quasi-administrative functions. Also, Article III status would empower the official to sit as a judge in various courts on temporary assignment if that seems desirable. It also seems sound to provide by statute that the person designated as Chancellor be already a federal judge; there is no reason to limit eligibility to a court of appeals judge, however, because able district judges might provide excellent candidates for such appointment. Because the Chancellor would, in effect, be a delegate of the Chief Justice and responsible to him for the discharge of administrative functions, it seems appropriate to provide that the Chancellor be selected by the Chief Justice himself.

The provision in S. 2035 making the Chancellor the presiding judge of the National Court of Appeals seems unwise. Although this could be a workable arrangement, the administrative duties of the Chancellor are likely to be so substantial that to place him also as the head of an important national appellate court would simply be to recreate the problems that the Chief Justice presently faces in his multiple duties as presiding judge of the Supreme Court, one of its active judges, and a system-wide administrator. It seems preferable to leave the Chancellor as solely an administrative officer, subject to occasional court sittings by designation of the Chief Justice.

The presiding judge of the Inter-Circuit Court of Appeals should be one of the nine judges designated for service on that court. Once nine circuit judges are designated for service on the new appellate court, the chief judge could be appointed from among their number by the Chief Justice.

Suggested Alternative Statutory Provisions

Suggested alternative statutory provisions are attached to this statement. These statutory drafting suggestions are aimed at the objectives of S. 2035 while at the same time embodying the ideas set forth in this statement. They are attached with the hope that they will be of assistance to the SubCommittee as it gives further consideration to the much-needed appellate court and to the creation of the office of Chancellor.

Suggested Statutory Alternatives to Be Inserted in Appropriate Chapters of Title 28, U.S.C.

Sec. __. Inter-Circuit Court of Appeals /Organization/

(a) The Inter-Circuit Court of Appeals shall be composed of nine circuit judges designated to serve on the court for a term of six years each. Such designation shall be made by the Chief Justice with the concurrence of the Supreme Court. The Chief Justice shall appoint the chief judge of the Inter-

Circuit Court from among the nine circuit judges designated for service on that court. The term of the chief judge shall be coextensive with the term of his designation for service on the court. At the end of his term of service on the court, a judge may be redesignated for one additional six-year term.

(b) A circuit judge in either active or senior status is eligible for designation to the Inter-Circuit Court of Appeals if he has served on a court of appeals for at least five years and consents to the designation. The Supreme Court in its discretion may terminate at any time the designation of a judge to serve on the Inter-Circuit Court of Appeals.

(c) When a circuit judge in active status is designated for service on the Inter-Circuit Court of Appeals a vacancy shall be deemed to exist on the court of appeals to which he was appointed commencing with the effective date of his designation. If at the end of the period of such designation the judge returns in active status to the court of appeals to which he was appointed no vacancy on that court of appeals shall be filled until the number of judges in active status on that court is less than the number of authorized judgeships for that court.

(d) If the number of authorized judgeships on a court of appeals does not exceed twelve, no more than one circuit judge in active status may be designated for service on the Inter-Circuit Court of Appeals. If the number of authorized judgeships on a court of appeals does not exceed fifteen, no more than two circuit judges in active status may be designated for service on the Inter-Circuit Court of Appeals. If the number of authorized judgeships on a court of appeals exceeds fifteen, no more than three circuit judges in active status may be designated for service on the Inter-Circuit Court of Appeals.

Sec. __. Inter-Circuit Court of Appeals. /Jurisdiction/

(a) The Inter-Circuit Court of Appeals shall have jurisdiction

(1) to review by writ of certiorari final judgments of

the highest court of a state, the District of Columbia, and the Commonwealth of Puerto Rico in which a decision could be had in any case in which any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of the United States;

(2) to render final judgment in any case referred to it for that purpose by the Supreme Court;

(3) to grant or deny any petition for certiorari or dispose of any appeal referred to it by the Supreme Court. If the court grants a petition for certiorari it shall thereafter render final judgment in the case. In granting or denying petitions for certiorari and in acting upon statements of probable jurisdiction in appeals, the court shall, if so directed by the Supreme Court, sit in panels of five judges. In all other cases the court shall sit en banc.

(b) In any criminal conviction presented to the court for review under subsection (a)(1), the court shall examine the record to determine whether the conviction or sentence has been imposed in violation of the Constitution, treaties, or laws of the United States, even though no claim of such violation was made in the courts of the state or such claim was not made in accordance with the law of the state. The court in its discretion may receive and consider evidence outside the record to determine whether such violation occurred at any stage of the proceedings in the courts of the state. The court shall have jurisdiction to remand a criminal case to the appropriate state court for such further proceedings as the court may deem necessary or appropriate to determine whether such violation occurred.

(c) The Inter-Circuit Court of Appeals shall promulgate rules governing its procedures and internal processes not inconsistent with rules promulgated by the Supreme Court.

Sec. __. Inter-Circuit Court of Appeals /Supreme Court jurisdiction in relation to/

(a) The Supreme Court may refer for decision to the Inter-Circuit Court of Appeals

(1) any case in which the Supreme Court has granted a writ of certiorari or noted probable jurisdiction;

(2) any petition for certiorari or statement of probable jurisdiction.

(b) The Supreme Court by rule may specify categories or types of cases in which petitions for certiorari or statements of probable jurisdiction shall be referred by the clerk of the court to the Inter-Circuit Court of Appeals for determination by that court.

(c) The Supreme Court shall have jurisdiction to review by writ of certiorari any case in the Inter-Circuit Court of of Appeals before or after rendition of judgment by that court.

(d) The Supreme Court may promulgate rules governing procedure and internal processes in the Inter-Circuit Court of Appeals and may provide in such rules that the court shall sit in panels of five judges when acting on petitions for certiorari and statements of probable jurisdiction.

Sec. __. Chancellor of the United States Courts.

(a) A Chancellor of the United States Courts shall be appointed by the Chief Justice from among the circuit judges or the district judges in active or senior status who have had at least five years service on any court of the United States. The appointment shall be for a term of five years and may be renewed for one additional term of five years.

(b) The Chancellor shall be the chief administrative officer of the United States courts and may be authorized by the Chief Justice to perform any duty and to exercise any responsibility conferred by law upon the Chief Justice, except that of participating in the deliberations and decisions of the Supreme Court or of presiding over the Supreme Court.

(c) In addition to the authority conferred upon the Chancellor under subsection b, that officer is authorized to

(1) exercise the authority conferred by statute on the Chief Justice to assign judges to sit on courts other

than those to which they are appointed, unless such authority is exclusively vested by statute in the Chief Justice;

(2) to serve as the presiding officer of the Judicial Conference of the United States, to appoint committees of the Conference, and to supervise work of the Conference and the implementation of its decisions;

(3) to oversee the work of the Administrative Office of the United States Courts;

(4) to engage in continuous planning for the needs of the federal judicial system, develop measures for the more effective administration of the system, and develop proposed legislation to enable the system to function effectively; and,

(5) to communicate on behalf of the United States courts to the Congress and to the President on matters concerning the needs of the courts and proposals for legislative or executive action designed to meet those needs.

(c) The Chancellor shall be a member of the Board of Directors of the Federal Judicial Center and a member of the Judicial Conference of the United States.

(d) The Chancellor shall report to the Chief Justice at such times and in such manner as the Chief Justice may direct and shall be subject to administrative direction by the Chief Justice.

(e) The Chancellor, with his consent, may be assigned by the Chief Justice to sit on any court of the United States, except the Supreme Court and the Inter-Circuit Court of Appeals.

(f) If at the time of his appointment as Chancellor, a judge is in active status, a vacancy shall be deemed to exist on the court to which he was appointed commencing with the date of appointment as Chancellor. If at the end of his term as Chancellor a judge returns in active status to the court to which he was appointed, no vacancy on that court thereafter shall be filled until the number of judges in active status is less than the number of judgeships authorized for that court.

Published Articles on Need for New Federal Appellate Court

Cameron, James Duke. Federal Review, Finality of State Court Decisions, and a Proposal for a National Court of Appeals - a State Judge's Solution, 1981 B.Y.U. L. Rev. 545.

Griswold, Erwin. Rationing Justice - The Supreme Court's Caseload and What the Court Does Not Do, 60 Cornell L. Rev. 335 (1975).

Haworth, Charles. Circuit Splitting and the "New" National Court of Appeals: Can the Mouse Roar?, 30 Sw. L.J. 839 (1976).

Haynsworth, Clement. Improving the Handling of Criminal Cases in the Federal Appellate System, 59 Cornell L. Rev. 597 (1974).

Hufstedler, Shirley. Courtship and Other Legal Arts, 60 A.B.A.J. 545 (1974).

Hruska, Roman. National Court of Appeals: An Analysis of Viewpoints, 9 Creighton L. Rev. 286 (1975-76).

Leventhal, Harold. A Modest Proposal for a Multi-Circuit Court of Appeals, 24 Am. U.L. Rev. 881 (1975).

Levin, A. Leo. Adding Appellate Capacity to the Federal System: A National Court of Appeals or an Inter-Circuit Tribunal, 39 Wash. & Lee L. Rev. 1 (1982).

Lumbard, J. Edward. National Court of Appeals: Is It Necessary? 32 Rec. A.B. City N.Y. 106, 109-110 (1977).

Meador, Daniel. The Federal Judiciary--Inflation, Malfunction, and a Proposed Course of Action, 1981 B.Y.U. L. Rev. 617 (1981).

Rosenberg, Maurice. Enlarging the Federal Courts' Capacity to Settle the National Law, 10 Gonz. L. Rev. 709 (1975).

Wiggins, Charles. The National Court of Appeals, Trial, Nov. 1977, at 35.

COMPARISON OF FEDERAL LEGAL INFLUENCES
ON STATE SUPREME COURT DECISIONS
IN 1959 AND 1979

Prepared by: National Center for State Courts, D.C. Office

Under Contract with the Federal Justice Research Program
U.S. Department of Justice—1981

INTRODUCTION

This report, entitled Comparison of Federal Legal Influences on State Supreme Court Decisions in 1959 and 1979, was prepared in response to a purchase order issued by the former Office for Improvements in the Administration of Justice, Department of Justice. The report is based on the analysis of some 1,400 state supreme court cases in four states (California, Connecticut, Illinois and Virginia) to ascertain whether the influence of federal law upon state supreme court decisions has substantially increased in the last two decades. Particular emphasis was placed on civil appeals.

A. Principal Findings

The analysis of state supreme court cases revealed that:

- reliance upon or reference to federal legal precepts and federal policies increased from 14.3 % of all reported cases in 1959 to 41.6% of all reported cases in 1979;
- reliance upon or reference to federal legal precepts in criminal cases has increased from 21.8% in 1959 to 72.1% in 1979;
- not only is federal law being invoked and applied in more criminal appeals, but its influence on state supreme court holdings has increased significantly;
- reliance upon or reference to federal legal precepts in civil cases increased from 11.8% in 1959 to 28.5% in 1979;
- the influence of federal law on civil appellate decisions is markedly less than the influence of federal law on criminal appellate decisions;
- the influence of federal law on civil appellate holdings increased only slightly from 1959 to 1979; and;
- finally, there were significant differences between the four states in levels of federal legal impact, although all experienced increased federal legal influence.

B. Methodology

1. The Test States

The four states selected for the study were: California, Connecticut, Illinois and Virginia. The states are geographically diverse, but probably above average in degree of urbanization and socio-economic complexity. The states vary in appellate structure, as indicated below:

State	Name of Highest Appellate Court	Appellate Jurisdiction	Intermediate Appellate Courts (if any)
California	Supreme Court (6 judges)	Largely discretionary except in capital cases.	Courts of Appeal
Connecticut	Supreme Court (6 judges and 1 judge who serves as court administrator)	Direct appeal from Superior Court in matters not within jurisdiction of appellate session of Superior Court; Appeals from Superior Court session must be certified.	Superior Court session may serve as an intermediate court of appeal; very limited appellate jurisdiction.
Illinois	Supreme Court (7 judges)	Largely discretionary except capital cases, constitutional cases certified by Appellate Court as important.	Appellate Court. There is a right of appeal to this court.
Virginia	Supreme Court (7 judges)	Largely discretionary. Except on issues of constitutionality, appeals from two administrative agencies.	None.

The principal criteria for choosing the four states were geographical diversity and diversity in appellate structure. If further studies are undertaken, it would probably be preferable to take a random selection of all appellate cases from the Reporter series to avoid possible statisical aberration caused by unique appellate practices in a particular state.

2. Periods Covered by Research

The years covered by the research were 1959 and 1979, providing a twenty-year time span in which to measure change. Below are noted the exact periods covered by the research and the volumes referenced to find the reported decisions of the four state supreme courts.

State	Time Periods	Volume of Reports
Connecticut	1959 1979	146, 147 176, 177, 178, 179
California	1959 1979	51^{2d}, 52^{2d}, 53^{2d} 23^{3d}, 24^{3d}, 25^{3d}
Virginia	1959-60 (3/1-2/28) 1979-80 (3/1-2/28)	201 219, 220
Illinois	1959 1979	14^{2d}, 15^{2d}, 16^{2d} 73^{2d}, 74^{2d}, 75^{2d}, 76^{2d}, 77^{2d}

3. Ascertaining Federal Legal Involvement

Each supreme court opinion within the specified time period was examined to determine if there was federal legal involvement, defined as reference to or reliance upon federal constitutional provisions, federal statutes and regulations, federal court decisions, federal policies or reliance upon state laws fashioned on a federal model.[1] Each decision was categorized as a civil or criminal.[2] Those decisions involving federal law were briefly summarized with respect to the nature and legal significance of the federal legal aspect.

4. Significance of Federal Legal Involvement

Federal law may be cited in a very peripheral way, or it may be controlling of a state supreme court decision. It was therefore necessary to weight the significance of the federal legal involvement to the state supreme court decisions. This was done by categorizing federal legal involvement in one of four categories (a somewhat difficult, subjective decision in many instances) and assigning a weight to each category:

Category	Weight
Controlling/highly influential to holding	1.0
Supportive of holding/controlling or highly influential on subsidiary points	.75
Federal law and legal issues invoked and considered, but not applied	.50
Random, peripheral references to federal law	.25

Thus, for example if the average weight of a criminal case in California were .90, it would indicate a high level of federal legal influence, whereas an average weight of .60 would indicate rather modest federal influence.

5. Special Analysis of Civil Appellate Cases

Due to the special interest in the federal impact on civil appellate cases, an effort was made to break these cases into more detailed subcategories for analytical purposes. Civil cases were placed in subject-matter categories (See Table 6, infra) and were also subdivided according to the nature of the federal legal involvement.

---

[1] One subsidiary hypothesis was that some state legislative acts are based on federal models to meet federal program requirements or simply because the federal law was deemed worthy of replication. It proved difficult to identify such statutes unless explicit references were made to federal law.

[2] Juvenile delinquency cases and prisoner habeas petitions were categorized as criminal, although they are technically civil in nature.

6. Summary

The methodology described in this section is not rigorous from a social science perspective, since the research materials largely preclude objective quantification. The methodology was, however, sufficient to produce clear answers on the general hypothesis that:

> The influence of federal law on state Supreme Court decisions has increased substantially in the last twenty years.

C. ANALYSIS

1. General Trends

The incidence of federal legal references in state supreme court decisions has risen sharpley in the period from 1959 to 1979, increasing from 14.3% in 1959 to 41.6% in 1979 (as indicated in Table 1).

TABLE 1
Increase in Federal Legal References in State Supreme Court Cases Between 1959 and 1979 (All Reported Cases)

State	1959			1979		
	Total Cases	Cases with Federal Involvement	%	Total Cases	Cases with Federal Involvement	%
California	214	43	20.1	162	95	58.6
Connecticut	126	13	10.3	209	95	45.4
Illinois	218	36	16.5	246	92	37.4
Virginia	132	7	5.3	170	46	27.1
Total	690	99	14.3	787	328	41.6

While the overall trend is clear, it is also obvious that each state had a different pattern of change. California showed more inclination in both years to reference federal law, while Virginia was much more sparing in its use of federal legal precepts.[3] Even though Connecticut and

---

[3] While it was not an object of study, it should be noted that Virginia, more so than the other states, remains a common law state, with many cases still disposed on traditional case law grounds California, conversely, is a highly codified state and a socially innovative state, so that many cases arise as matters of statutory interpretation or as test cases on matters of fundamental social policy.

Illinois stood between Virginia and California in use of federal law in both 1959 and 1979, the increase over the twenty year period in federal legal references was much greater in Connecticut than it was in Illinois.

2. Criminal Cases

The general statistics, which are based on both criminal and civil cases, are, however, slightly misleading. They disguise the fact that criminal cases, more so than civil cases, accounted for much of the increased use of federal law in state supreme court decisions. Table 2 illustrates the particular importance of federal law in the criminal area.

TABLE 2
Increase in Federal Legal References in State Supreme Court Cases Between 1959 and 1979 (Criminal Cases)

State	1959			1979		
	Total Cases	Cases with Federal Involvement	%	Total Cases	Cases with Federal Involvement	%
California	66	19	28.8	70	51	72.8
Connecticut	16	5	31.2	46	43	93.5
Illinois	69	10	14.6	68	48	70.5
Virginia	17	3	17.6	53	29	54.7
Total	168	37	21.8	237	171	72.1

The use of federal law increased from 21.8% in 1959 to 72.4% in 1979. This dramatic change is directly attributable to United States Supreme Court decisions expanding the application of Fourteenth Amendment Due Process to state criminal proceedings. Virtually every criminal appellate case in Connecticut in 1979 involved some federal legal aspect. Even in less federally oriented Virginia, over 50% of criminal appeals involved some use of federal legal precepts. The "federalization" of state criminal procedure is apparent in these figures, but it should be noted that state constitutional grounds were often invoked simultaneously with the federal grounds and were occasionally relied upon as the primary legal basis for the court's holding. The California Supreme Court, in particular, emphasized state constitutional law, while referencing parallel federal constitutional law.

3. Civil Cases

The broad application of federal constitutional principles to state criminal procedure has created a federal legal hegemony with no counterpart on the civil side of court. Federal legal impact on civil appellate cases has not been as profound. There has nonethtless been a significant increase in the federal legal impact on civil appellate cases, as noted in Table 3.

TABLE 3
Increase in Federal Legal References in State Supreme Court Cases Between 1959 and 1979 (Civil Cases)

State	1959			1979		
	Total Cases	Cases with Federal Involvement	%	Total Cases	Cases with Federal Involvement	%
California	148	24	16.2	92	44	46.7
Connecticut	110	8	7.2	163	52	31.9
Illinois	149	26	17.4	178	44	24.7
Virginia	115	4	3.4	117	17	14.5
Total	522	62	11.8	550	157	28.5

The general increase in use of federal legal references in civil cases (11.8% to 28.5%) disguises some very different trends in individual states. California, second to Illinois in referencing federal law in 1959, dramatically increased its use of federal law over the twenty-year period, clearly differentiating itself from the other states in this regard. Connecticut also experienced a rather dramatic increase, moving from negligible use of federal law in 1959 to a fairly substantial use (almost one third of all cases) in 1979. Illinois and Virginia, on the other hand, showed very modest increase in use of federal law over the twenty year period, with Illinois dropping from first to third place in this regard and Virginia continuing to largely eschew use of federal legal precepts in civil cases.

Overall, however, it can be stated that the increase in use of federal legal precepts in civil appellate cases has been significant, albeit far less dramatic than the increases on the criminal side.

TABLE 4
Comparative Rates of Increase in Federal Legal References
In Civil and Criminal Appeals

Type of Case	Cases With Federal Involvement		Difference in 1959 and 1979 Percentages	Rate of Increase from 1959 to 1979
	1959 %	1979 %		
Criminal	21.8	72.1	50.3	3.3
Civil	11.8	28.5	16.7	2.4

4. Influence of Federal Law on Holdings

Mere reference to federal law is, of course, no indicator of federal legal influence. The trends noted in Tables 1, 2, 3, and 4 do not take into account the actual impact of federal law on state supreme court decisions. In Table 5 (using the weights set forth in the methodology section, supra, p. 4), the increase in actual influence of federal law is quantified.

TABLE 5

Federal Influence on State Supreme Court Decisions
(Weight per Case)

State	1959			1979		
	Civil	Criminal	Total	Civil	Criminal	Total
California	.76	.74	.75	.67	.83	.73
Connecticut	.62	.65	.63	.66	.93	.78
Illinois	.57	.65	.59	.65	.78	.72
Virginia	.56	.58	.57	.82	.88	.86

Table 5 indicates that federal law had much more influence on court decisions in 1959 in California, than it did on the other three states. However, federal influence on state supreme court decisions hardly varied in California over the twenty year period, while the influence of federal law in the other states increased markedly, one of them, Connecticut, surpassing California in terms of federal influence.

Also notable is that in 1959, there was no notable difference between federal influence on civil and criminal cases. By 1979, there was a marked difference, with criminal cases subject to much greater federal influence.

Interestingly, Virginia showed the sharpest increase in federal legal influence, although the Virginia Supreme Court referenced federal law much less frequently than the supreme courts of the other three states. This suggests that federal law was invoked in Virginia only when it was highly germane to the decision, whereas there was a tendency in the other states to invoke federal legal precepts more generally.

TABLE 6
Subject Matter Breakdown of Civil Appellate Cases
Referencing Federal Law

General Subject Matter Areas	Specific Subject Matter Areas	1959		1979		Total
		#	%	#	%	
Government Action Affecting Economic Interests	Land use/Condemnation	6	-	10	-	16
	Taxation/Taxpayer suits	6	-	10	-	16
	Licensing/Denial of Government Benefits	3	-	10	-	13
	Utility rates/Administrative rule-making	0	-	8	-	8
	Unfair/Anticompetitive business practices	2	-	4	-	6
	Environment/Resources control	2	-	4	-	6
	Miscellaneous challenges to regulatory laws	4	-	6	-	10
	Subtotal	23	37.0	52	33.1	75
Private Litigation	Torts/Workman's comp.	2	-	16	-	18
	Domestic relations	2	-	10	-	12
	Trusts/Estates/Fiduciaries	4	-	9	-	13
	Contract/Debtors	5	-	14	-	19
	Subtotal	13	20.9	49	31.2	62

TABLE 6
Subject Matter Breakdown of Civil Appellate Cases
Referencing Federal Law (Continued)

General Subject Matter Areas	Specific Subject Matter Areas	1959		1979		Total
		#	%	#	%	
Employee Rights/ Labor Disputes	-	8	12.9	18	11.4	26
Procedural Issues	-	2	3.2	17	10.8	19
Other	Public interest litigation	0	-	2	-	2
	Bar/Judicial discipline	2	-	8	-	10
	Voting/Elections/ Public officials	2	-	3	-	5
	Intergovernmental issues	4	-	1	-	5
	Civil liberties	4	-	2	-	8
	Mental disability/ Civil commitment	0	-	2	-	2
	Miscellaneous	4	-	1	-	5
	Subtotal	16	26.0	21	12.3	37
	Total	62	100.0	157	100.0	219

5. Civil Appellate Cases By Subject Matter - 1959/1979

No striking patterns emerge from subject matter analysis of civil appellate cases referencing federal law. The only striking conclusion is that federal law is involved in virtually every aspect of civil litigation, even the traditional common law areas. Table 6 illustrates the number of civil subject matter areas where federal law has been referenced.

Although no dominant patterns emerge from Table 6, a number of observations can be made about the statistics contained in the table:

- government action affecting economic interests is the area where federal law is most frequently invoked (and most influential to the holding);
- the apparent increase from 1959 to 1979 in federal references in private litigation (i.e., torts, contracts, etc.) is largely due to invocation of federal case law in diversity cases dealing with state common law (Connecticut evidenced a proclivity for federal citations on many points not specifically federal in nature);

- utility rate-making cases and administrative procedure cases increased siginficantly (from 0 to 8) in the twenty year period; as did bar discipline cases (2 to 8).
- labor disputes and employee rights remain a major area of federally influenced litigation with employee rights (as opposed to union activity) accounting for an increasing share of cases;[4] and
- finally, between 1959 and 1979 there has been a great increase in purely procedural cases involving federal law.[5]

6. Types of Federal Law Invoked in Civil Appellate Cases

a. Federal Constitution

Unlike criminal cases, where the federal constitution is invoked almost routinely, civil appellate cases do not often involve federal constitutional issues. In both 1959 and 1979, about 30% of civil appeals referencing federal law involved federal constitutional issues. Table 7 indicates the constitutional provisions most frequently relied upon:

TABLE 7
Federal Constitutional Issues Most
Frequently Relied Upon In Civil Appeals
(by percentage)

Constitutional Provision	1959 % of Constitutional Issues Invoked	1979 % of Constitutional Issues Invoked
Denial of Procedural Due Process	55.5	45.6
Denial of First Amendment Procedures (via 14th Amendment)	11.1	17.5
Denial of Equal Protection of Law	5.6	12.2
Denial of Substantive Due Process	.0	8.7
Full, Faith and Credit	16.7	3.5
Impairment of Contract	.0	5.2
Impingement on Commerce Power of Federal Government	11.1	1.7
Other	.0	5.4

---

[4] However, California and Connecticut accounted for 20 of the 26 cases in this area.

[5] Illinois accounted for 12 of the 17 cases in this area, 10 in 1979 alone. Included were cases on mootness, statutes of limitations, forum non conveniens, jurisdiction, etc.

Procedural Due Process, the most frequent constitutional issue, has arisen most commonly in connection with administrative agency action. Connecticut had an unusually high number of cases involving issues of fairness in governmental proceedings.

Some of the more traditional constitutional issues (i.e., Full, Faith and Credit in enforcement of foreign judgments and challenges to tax laws based on the Commerce Clause) declined in importance between 1959 and 1979, giving way to cases arising under the First Amendment, challenges to regulatory laws as being so broad or vague as to violate Due Process and increased use of the Equal Protection Clause.

b. Federal Statutes

In 1959, 30% of the cases referencing federal law involved federal statutes. This percentage dropped to 8.5% in 1979. The variety of federal statutes invoked was so great that they defy categorization: National Labor Relations Act (11); Internal Revenue Code (4); Social Security Act (3); Civil Rights Act of 1964 (3); Federal Trade Commission Act/Sherman Antitrust Act (3); Federal Employers Liability Act (2); Safety Appliance Act (1); Federal Highway Act (1); and Freedom of Information Act (1). Other laws could be listed, but the salient fact is that there are only five areas of federal statutory law that are referenced to any extent:

- labor law
- tax law
- social security law
- antitrust laws
- civil rights law

c. General Federal Case Law References

One marked difference between 1959 and 1979 was the tendency of state supreme courts to cite federal cases on a variety of issues, often not specifically federal in nature. In 1979, 80 of the 157 civil cases involving federal law were cases in which federal cases were cited on issues other than those raised by the federal constitution, federal statutes or federal rules of procedures. In some instances, these federal cases were highly influential, but more often than not, they were not of major significance to the ultimate decision.

d. Reliance on Federal Procedures

In 1959, there was not one instance of a state supreme court relying on federal rules of procedure in the decision of a state procedure issue. In 1979 there were seven cases (California (1), Connecticut (3), Illinois (3)) in which state supreme courts found federal court interpretation of federal procedure highly persuasive in interpretation of state rules of procedure based on federal models, specifically:

- Federal Rules of Civil Procedure (3)
- Federal Administrative Procedure Act (2)
- Federal Rules of Appellate Procedure (1)
- United States Supreme Court Rules (1)

e. Miscellaneous Federal Issues

Some flavor of the miscellaneous federal influences affecting state supreme court decisions can be derived from the following list:

- An Illinois suit against Air France dismissed under provisions of an international convention (i.e., treaty);
- California cases on salary increases affected by duration of Korean war, specifically the presidential action to conclude it;
- Reliance on National Service Life Insurance coverage to interpret a Connecticut insurance program for public employees;
- Effect of Federal Power Commission regulations on rates of state-regulated utilities (Virginia, California); and
- Reliance on practice of Securities and Exchange Commission in forcing restitution of illicit gains.

The list could be much longer. The complexity of federal law has found its way into state law.

D. Implications for Future Research

The purpose of this paper was exploratory rather than definitive. The goal was to ascertain where there was enough evidence of federal influence on state supreme court decisions to warrant a major study of the subject, particularly in the civil areas since the impact of federal law in the criminal area was assumed.

The results of this paper speak for themselves on this issue. There has been a substantial increase in use of federal law by state supreme courts.

Senator **Heflin**. Judge Clement Haynsworth from the Fourth Circuit Court of Appeals was unable to be with us today, and his statement will be made a part of the record.

[The prepared statement of Judge Haynsworth follows:]

Prepared Statement of Clement F. Haynsworth, Jr.

My name is Clement F. Haynsworth, Jr. I am now a senior judge of the U.S. Court of Appeals for the Fourth Circuit.

Senator Dole's invitation particularly invited my comment upon the proposal to create an office of "Chancellor of the United States and the assignment of Senior Judges to the newly created court."

In all of the proposals for a new national court, the problem of judicial staffing has proved a stumbling block. The proposed solution in S. 2035 is an innovative one. I thoroughly applaud the idea of bestowing the title of Chancellor of the United States upon the new court's presiding and administrative judge, but I do suggest that the age limit for service by senior circuit judges is too low and, more importantly, there should be provision for a transition to a court of permanent judgeships.

If senior circuit judges may serve only if they are under 70, the court will not get much assistance from senior circuit judges. The great burden will be upon active circuit judges, and their service will burden the other judges of the courts from which they come. Much more help from seniors could be expected if the age limit were removed altogether and the chancellor authorized to exclude from the pool any judge whose mental powers were thought to be failing. Alternatively, the age limit of something on the order of 75 would be a substantial improvement over an age limit of 70.

As a permanent provision, I do not think the temporary assignment of circuit judges would work. This important court should be a stable one, but rotating assignments of circuit judges for short periods, I believe, would strongly tend to undermine that stability and the continuity which should be developed in the decisions of that court. It seems a useful device to avoid the political problem that inheres in any proposal to have one President appoint all of the judges. To avoid that problem, it might be useful to have a provision for the appointment of permanent judges to that court over a period of time so that all of them would not be appointed during one presidential term. Temporary assignments of circuit judges could make up the balance during the transition period.

I strongly adhere to my earlier expressed view that the court should be one of entry as well as one of reference. Such jurisdiction offers the only acceptable means, of which any one has thought, which would endow convictions in state criminal trials with a substantial measure of finality and avoid the unseemly, time-consuming and repetitious reviews in Federal habeas corpus proceedings under § 2254. However, my views sufficiently appear in the written statement filed last year by John Frank of Phoenix, Ariz., on behalf of himself, Dean Erwin Griswold, and me.

As to that, my views are also discussed rather extensively in the Note "Administering the Death Penalty," 39 Washington & Lee Law Review, 101.

Senator **Heflin**. Our second panel today will address S. 1874 and S. 1403, the Judicial Survivors' Annuity Reform Act of 1981. The purpose of each bill is to amend section 376 of title 28 United States Code, in order to reform and improve existing program for annuities for survivors of Federal justices and judges. In light of the increased cost of living, this legislation will provide for increased payments by Federal judges into the system, increased benefits to their surviving spouses, and minor children.

The Thurmond and Moynihan bills differ primarily in the amount of the increase of the contribution and the benefits to which the survivors are entitled.

We welcome our witnesses today, the Honorable Irving R. Kaufman, U.S. Court of Appeals, Second Circuit; the Honorable James Harvey, Federal District Court, Bay City, Mich.; the Honorable Spencer M. Williams, U.S. District Court for the Northern District of California; and the Honorable William H. Mulligan, a former Federal judge who is now a practicing attorney in New York. We are delighted to have you gentlemen before us, and I am going to ask Judge Kaufman, if he will, to lead off.

STATEMENTS OF HON. IRVING R. KAUFMAN, U.S. COURT OF APPEALS, SECOND CIRCUIT, NEW YORK, N.Y.; HON. JAMES HARVEY, FEDERAL DISTRICT COURT, BAY CITY, MICH.; HON. SPENCER M. WILLIAMS, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA; AND WILLIAM H. MULLIGAN, ATTORNEY, SKADDEN, ARPS, SLATE, MEAGHER & FLOM, NEW YORK, N.Y.

Judge KAUFMAN. Mr. Chairman, as the chairman of the Committee on the Judicial Branch of the Judicial Conference of the United States, I want to say how much, not only on behalf of the Judicial Conference, but on behalf of the Federal judges, we appreciate this hearing on this legislation. It is a tremendous morale booster. I think very few Members of the Senate are as attuned as you are to the problems not only of the Federal court, but of the Federal judges.

I just want to read a rather brief statement. Extemporizing, I have found, makes me rather long winded. Then, of course, I will be open to your questioning. So I will just proceed.

I have devoted more than 33 years to the profession of judging. I have tried countless cases, written innumerable opinions as a Second Circuit Court of Appeals judge, and served as chief judge of that court. I cannot adequately express the frustration and concern which plague the Federal judiciary today.

The Chief Justice has received letters, and the volume of such letters has rapidly increased from a trickle to a torrent, informing him that the job of judging is simply becoming too burdensome for many judges in all areas of the country. Put simply, financial pressures and constant worry over them are diverting judges' attention from their primary responsibilities. Responding to this dilemma and particularly to the vexing problem of inadequate survivors' benefits, the Chief Justice created the Committee on the Judicial Branch of the United States and mandated it to present specific recommendations for reforming the existing survivors' annuity law. Our committee undertook that arduous task, and the result of our labors is the legislation before this subcommittee today. It is in my capacity as chairman of the Judicial Branch Committee, of course, that I appear as spokesman.

I would like to begin by pointing out that judges do not stand to benefit directly from the legislation now before you. Indeed, we will bear an additional cost if it becomes law. Our benefit will be in knowing that our survivors will not pay an unconscionable price for our continued devotion to the law. You will not be surprised that we are perfectly willing to pay, once I explain the inadequacies of the current system.

To cite just one example, the widow of a district judge on the bench for 7 years would receive an annual benefit of only $5,340—a meager sum by any account—for the rest of her days. If he died after 3 years, his widow would receive about $2,500. You can well imagine what this means to a proud man who has little capital.

Recognizing the nature and extent of the problem, the Committee on the Judicial Branch began its task with a careful analysis of the Judicial Survivors Annuities Reform Act of 1976, legislation passed in large measure because of the efforts of Judge Oren Harris, a member of the committee, and a former Member of Congress.

Our study of the legislative history of the act revealed that Congress clearly intended not only to improve the existing program, but also to make the new plan responsive to the need for increases in annuities in the future. One year before the enactment of the 1976 Reform Act, Congress passed legislation authorizing annual comparability adjustments in Federal judicial salaries to be determined by the same formula then used annually to increase rates of pay for Federal employees. The Senate Judiciary Committee presumed that the regular annual impact of those salary increases would insure—and I quote— "future periodic increases in annuity amounts" and that annuity adjustments would be made in tandem with salary adjustments. When the annuity computation formula was applied to the resulting high 3-year average annual salary amounts, however, annuities began falling behind intended levels almost immediately.

The committee, Mr. Chairman, was assisted by a prominent actuarial consultant, the Martin E. Segal Co. I might say that this company was recommended to us by the executives of the New York Times who have editorialized on this regularly. This is one of the foremost companies, and it undertook a thorough examination of the provisions of the current survivors' annuities plan, and our joint research disclosed that an inordinately long period of service was required to achieve annuity amounts which are realistic for today's economy. For example, a district judge must serve for 24 years for his spouse to receive an annuity of $20,000. In addition, if death should occur during a judge's early years on the bench, his survivors could receive either nothing at all or an annuity so infinitesimal as to amount to virtually nothing.

Moreover, if a judge who has recently remarried dies, his new wife will receive no annuity, and if a judge who has been on the bench less than 18 months should die, his widow, too, receives nothing. For those lucky enough to collect under this inequitable system, the benefits are paltry: Only about $5,000 a year, as I indicated, for the widow of a judge on the bench for 7 years.

In addition, if a judge's wife should die before he does—and I have Judge Kelleher from California in mind—and he has no need for a widow's annuity fund at all, the money he has contributed stays in the fund, and—as one of the most unfair aspects of the system—that sum is not refunded to him, but to his estate, upon his death.

Now, to rectify these faults, the annuity computation factors are modified in the bills before you, introduced by Senators Strom Thurmond and Moynihan, to 1½, a minimum of 30 percent, and a maximum of 50, from the present 1¼, zero, and 40-percent ceiling. That is, a new floor or guaranteed minimum annuity a surviving spouse will receive is established at 30 percent of the average annual salary amount.

Now, the ceiling or limitation on the percentage of salary a surviving spouse may receive as an annuity is increased only slightly, from 40 percent to 50 percent. Finally, the change in the computation formula to 1½ percent is crucial, because the computation figure has the greatest direct influence on year-by-year increases and annuity amounts, and the new number will carry out the congressional intent of the 1976 Reform Act, that annuity adjustments would keep pace with salary adjustments.

Of deepest concern is the accelerating pace of judicial resignations. In the 1950's, my first decade on the bench, 7 Federal judges resigned; in the 1960's, 8 resigned; in the 1970's, just as inflation began to erode the real income of a judge at a frightening rate, no less than 24 left the bench. The 1980's are likely to be even worse. In 1980, 3 judges resigned, and in 1981, 4 resigned. Judges who resign are men and women of talent and ability and most of all, experience, and the average age at resignation is only 56. In forcing a judge to leave the bench, we therefore deprive the American people of 15 or 20 years of accumulated wisdom. What is even more crucial, we cut short the most productive and useful years during which a judge can serve.

Moreover, we know that resignations of some of our most talented judges are directly attributable to the current system of survivors' annuities. For example, in resigning, my good friend and former colleague on the second circuit, Judge William Mulligan singled out survivors' annuities for special mention. He stated, "The benefits awarded to judges' surviving widows are shockingly low." Indeed, Judge Mulligan so strongly feels the current system of survivors' annuities to be inadequate that he is here at this table to testify. So is Judge Phil Tone.

The Quadrennial Commission also expressed concern over the current statutory scheme.

I have recently learned—and this is very extraordinary—that there is a Federal judge asking a Senator to permit him to return to the State system, where the annuity system is better.

Imagine the effect on the enthusiasm of a judge who knows that his departing law clerks, just 1 year out of law school, may choose to enter a major New York law firm and receive nearly $45,000 in salary their very first year in practice, not to mention the perquisites, including life and health insurance.

Moreover—and I will be frank—sustained retention of the current, inequitable survivors' annuities scheme will lead eventually to a reduction in the quality of the people who serve. This is what I mean when I refer to the relationship between survivors' benefits and judicial independence. We must be able to attract and to retain people of the highest caliber, and the alternatives are not happy ones. As cases become more and more complex and more and more dependent on scientific and economic expertise for their proper resolution, we must retain the high-quality judiciary we have been fortunate to have in the past.

The framers of the Constitution included in that document the compensation clause, precisely because they recognized the devastating impact of the situation we face today. The framers took care in creating guarantees of life tenure and no diminution in salary, that the judges would be secure against the indirect financial pressures imposed by a system which does not adequately provide for the survivors. I do not ask, Senator Heflin, that you create a windfall for judicial survivors, nor do I seek the sort of benefits extended by corporations or major law firms. But I do remind you that survivors' annuities have been labeled a scandal, and that something must be done to reform the current system. And today, I urge you to return judges to a reasonable level of survivors' benefits that will not further damage the great Federal courts of our country.

In sum, the point is simple. In light of the importance of the decisions that Federal judges make and the power they execute, do we not want the very best people occupying those positions? The decisions rendered by the Federal courts—and I include the justices in this—affect every aspect of our lives.

The heart of my message is this: Federal judges must be the best lawyers at the bar. The current system of judicial survivors' annuities is compromising and undercutting the constitutional system devised by the framers. The American people need a strong judiciary. Business, labor, and our Government need a strong judiciary. Our societal problems are increasingly complex, and our courts are called upon to solve them.

I urge you, Mr. Chairman, to exercise your powers, and I urge your colleagues to do the same to reform the current Judicial Survivors' Annuity Reform Act of 1976 as set forth in Senator Thurmond's and Senator Moynihan's thoughtful bills, S. 1874 and S. 1403.

Senator HEFLIN. Thank you, Judge Kaufman.

Judge Harvey is next. If you could, try to summarize it as briefly as you can.

Judge HARVEY. Thank you, Mr. Chairman. I will keep my remarks very brief.

My name is James Harvey. I have been a U.S. district judge now for almost 9 years. Before that, I served as a Member of the U.S. House of Representatives for almost 14 years, and had practiced law for almost 12 years before that.

I appear here today in behalf of the American Bar Association and particularly the Judicial Administration Division of the American Bar Association. It is somewhat presumptuous of me to explain that division to you, Senator Heflin, but I would simply say for the record that the Judicial Administration Division consists of some seven conferences, including the National Conference of Federal Trial Judges, of which I am currently the chairman. In the Judicial Administration Division are nearly 7,000 judges from State and Federal courts, trial and appellate courts, as well as the administrative law courts, and lawyers with special interest in our courts.

The problem of providing adequate survivors' annuities for the Federal judiciary has been with us for several years. I can recall that during the years I served in the Congress, it was necessary on one occasion to pass a special bill to handle the problem faced by the widow of one of our most prominent Justices of the U.S. Supreme Court. It was not, however, until recent years that the increased number of resignations by Federal judges, which Judge Kaufman has cited, have really focused attention on the need for the legislation here in question.

Mr. Chairman, it is of very great concern to all members of the bar and to the American Bar Association, when we lose the services of a distinguished judge such as Judge William H. Mulligan of the Second Circuit Court of Appeals, who sits here by my side, as well as the services of Judge Philip Tone of the seventh circuit, who is here also today.

But it is of equally great concern to the bar that we may fail to attract to the Federal bench, the exceptionally well-qualified lawyer, for the same reasons that have caused Judge Mulligan and Judge Tone to resign.

I therefore, Mr. Chairman, wish to express not only my own personal support, but also the support of the Judicial Administration Division of the American Bar Association, for the principles of the legislation embodied in S. 1874, which I am sure will help us to go a long way toward remedying the problem.

I would ask that my prepared statement be included, Mr. Chairman.

Senator HEFLIN. Thank you.

Yours and Judge Kaufman's and all of them will be made a part of the record.

[The prepared statement of Judge Harvey follows:]

PREPARED STATEMENT OF JAMES HARVEY, U.S. DISTRICT JUDGE, IN BEHALF OF JUDICIAL ADMINISTRATION DIVISION, ABA

The Judicial Administration of the American Bar Association wholeheartedly supports the principles of the legislation embodied in S. 1874 and H.R. 4763. We are mindful that there are slight differences between the two bills. However, we are keenly aware of the problems that an inadequate survivors' annuities program has caused within the Federal judiciary, and we believe that enactment of either S. 1874 or H.R. 4763 would go a long way toward solving these problems. The Judicial Administration Division of the ABA believes that the maintenance of an independent Federal judiciary is absolutely essential to the future of our Nation. Legislation such as either S. 1874 or H.R. 4763, helps to maintain that independent judiciary by providing a system of survivors annuities that will encourage well-qualified lawyers to accept appointments to positions on the Federal bench, and will at the same time discourage resignations, of which there have been so many in recent years. For all of these reasons, the Judicial Administration Division supports the enactment of either S. 1874 or H.R. 4763.

Senator HEFLIN. Judge Williams.

Judge WILLIAMS. Yes, Mr. Chairman. I am Judge Spencer Williams from San Francisco. I have been on the bench for 11 years.

I appear before you today representing the District Judges' Association of the ninth circuit, of which I am president, and the newly formed Federal Judges' Association, of which I am also president. The members of both associations are grateful that this committee has requested an expression of their views on this most important legislation.

The Ninth Circuit District Judges' Association consists of 97 active and senior district judges in the ninth circuit. The Federal Judges' Association, organized this year, consists of approximately 240 active and senior article III judges from the various district, circuit, and special courts in the Federal judiciary. It considers itself a grassroots organization, and its stated purpose is to seek the highest quality of justice for the people of the United States. Its constitution declares that preserving and protecting the ability of the Federal judiciary to attract and retain the best qualified men and women for judicial service is critical to its success.

That is why I am here today. We believe that the decision of a candidate for judicial office to seek or accept a Federal judgeship, and the decision of an incumbent judge to stay or not to stay in judicial office when faced with attractive offers to return to private practice, turn in large part on what each must give up in the way of income or other benefits, in exchange for the honor, the privilege, and the satisfaction of serving his or her country in this most important office.

An additional and equally compelling question is what that candidate or incumbent will require his or her spouse and children to give up so that he or she may accept or continue to perform judicial service.

The program presently offered the survivors of deceased Federal judges is so bad that it is embarrassing. Under the present program, the survivor of a deceased judge would receive 1¼ percent of the deceased judge's annual salary for each year of the deceased judge's service. In other words, assuming a salary of $70,000, a judge who served 5 years would receive about $3,000 per month, but should he or she die, his or her survivor would receive about $360 a month, a substantial drop in one's standard of living.

These figures are bad enough, but for those who have had to go through it, the tragedy is cruel, stark and unforgiveable. In 1971, two very bright partners of a large New Orleans law firm, Phelps & Dunbar, left private practice to become Federal judges. Both were exceptionally fine catches for the Federal judiciary. They were judges Blake West and Jack Gordon. I happened to know them both personally, as classmates at the 1971 judicial boot camp, officially referred to as a seminar for newly appointed Federal judges. We became friends and kept in touch over the years. Blake died after 7 years of service, and Jack died this spring, after 11 years of service. I contacted each of their widows and asked them to comment on the problems of trying to survive under the judicial survivors' annuity.

Mrs. West, who has recently moved from Louisiana to Alabama, Mobile, Ala., I believe—she returned home—has responded, and Mrs. Gordon's letter is on the way, and I ask leave to augment the record when her letter arrives.

Senator HEFLIN. They will be made a part of the record.

[Mrs. Gordon's letter was not available at presstime.]

Judge WILLIAMS. Thank you.

In the words of Mrs. West:

> When Blake died in 1978, he was survived by myself and four children, two in college, one in his senior year in high school, and a daughter who had just graduated from college. After his death, my problem was not only how to live myself, but how to see to it that all three of the younger children continued their education. This obviously was impossible on the approximately $550 per month which we were receiving from the Judicial Survivors' Fund. I went to work as a saleswoman in a local store. The children worked both part- and full-time. We used the entire proceeds from Blake's life insurance and, after 2 years, sold the family home. Four years have now passed since his death. Most, if not all of the educational burden has been lifted. All the children have reached age 22, the cutoff point for any judicial survivors' benefits. We have used all monetary resources that I am receiving, $308 per month, as Blake's sole eligible survivor.

With the happiness of Blake being appointed a U.S. district judge, we did not look ahead and foresee that this could happen. I hope that the judicial survivors' plight will be remedied so that no able attorneys, which the Federal bench needs so much now, will ever be deterred from accepting one of the Nation's most honored positions.

Most sincerely,

TIBBY WEST.

Neither of these ladies would have spoken out if I had not contacted. Neither has anything to gain by their comments——

Senator HEFLIN. Excuse me. We have to a vote on, and we have another issue. Can you summarize the remaining portion of yours? All of your statements will appear in full in the record, so if you will summarize.

Judge WILLIAMS. I certainly will. I would just conclude by saying that I have contacted private law firms in San Francisco to see what they do for survivors, and while I do not have enough material to make a final report, most do carry group life policies on their partners, paid for by the firm, of $500,000. Most of them provide that the decedents receive a vested share in the partnership; most of them take maximum advantage of Keogh plans. And I can say that the survivors of these partners will earn three to four times what the survivors of Federal judges receive.

Now, we sympathize with Congress. One is compelled to ask, "How can anyone ask for a budgetary increase or a program improvement during these times when so much trimming has already been done, and even more reductions are sought?" I personally empathize with Congress over this problem. I went through it myself in California for the executive branch in the late sixties, working with Governor Reagan. However, we found out then and know now, that sometimes we can save money by spending money. Although the actual savings realized by keeping a technical sergeant, or a chief bosun, or a doctor, or a judge on active duty rather than quit is hard to quantify, I think we all know that keeping experience onboard usually has positive, cost-effective results.

I urge that you give favorable consideration to S. 1874.

Judge KAUFMAN. Mr. Chairman, may I suggest that you hear Judge Phil Tone, who is head of the judiciary committee of the American College, and he will be about 2 minutes, and then listen to Judge Mulligan, my former colleague, who is exhibit A, who resigned because of this and he will just be about 2 minutes.

Senator HEFLIN. All right, sir. We will be delighted to do it—I am going to have to vote—I will ask Mr. Briskman to continue.

So if you will, Judge Kaufman, you call on Judge Tone, and then you call on all the rest of the judges, and it will be made a part of the record, and every Senator will read every word of it.

Judge KAUFMAN. Thank you, Senator.

Judge Tone, would you like to proceed?

STATEMENT OF JUDGE PHILIP W. TONE, CHAIRMAN, JUDICIARY COMMITTEE, AMERICAN COLLEGE OF TRIAL LAWYERS

Judge TONE. Yes. I have a prepared statement, which I ask leave to submit.

I am here on behalf of the American College of Trial Lawyers and as chairman of its judiciary committee. The college, as I believe the Senators know, is a national organization of trial lawyers of the United States. It is keenly interested in preserving the quality of the Federal judiciary.

I also happen to be, as has been stated earlier this morning, a former Federal judge, having served both on the district court and the court of appeals.

I will not prolong the oral presentation by repeating what others have said. I endorse what they have said. I know from my personal experience that the level of judicial survivors' annuity is a real problem for sitting Federal judges. It concerns them greatly, and it has a severe effect on their morale. I also know from personal experience, because I often speak to the lawyers who are considering the possibility of appointment to the Federal bench, having been approached by Senators in that connection, and often, they do not know the level of judicial survivors' annuities until their conversation with me. When they hear them, they are shocked.

I am satisfied that the low survivors' annuity benefits have a substantial effect on the consideration by lawyers of the possibility of going on the Federal bench. The American College of Trial Lawyers supports the legislation and urges that it be adopted.

[The prepared statement of Judge Tone follows:]

PREPARED STATEMENT OF PHILIP W. TONE

My name is Philip W. Tone. I appear on behalf of the American College of Trial Lawyers and as Chairman of its Judiciary Committee. The college, whose nationwide membership is made up of lawyers chosen for their skill and experience in the trial of cases, is, I believe, well know to the members of this committee. The College's Judiciary Committee is charged with the responsibility of "identify[ing] and seek[ing] to ameliorate problems of the Federal and State judiciary which hinder the attraction and retention of highly qualified judges." As the premier organization of trial lawyers in the United States, the college is keenly interested in preserving the quality of the Federal judiciary through retention of the judges now in office and making Federal judgeships attractive to lawyers of the highest competence.

So much has been said about the recent dramatic increase in resignations from the Federal judiciary and the decreasing attractiveness of Federal judgeships to lawyers who are at the top of the profession that I need not speak on that subject. Nor is there any need for me to speak to this distinguished committee about the importance of maintaining a highly qualified Federal judiciary. The problem before this committee today, however, bears heavily on these important matters.

The lawyer in private practice is ordinarily able to make adequate provision for his dependents in the event of his death. If he is a member of a law firm, he will typically have a group life insurance policy with coverage that greatly exceeds the amount available at reasonable rates through the Federal Government, and his estate will receive death benefits from his law firm, typically in an amount equal to at least 1 year's compensation. A lawyer in a small firm or practicing independently is similarly situated except that his estate will receive, instead of a payment from the law firm, fees for work the lawyer has done but not yet been paid for.

In addition, in metropolitan areas especially, most highly competent lawyers, who comprise the group from which we all want Federal judges to be selected, will have been able to accumulate substantial savings from earnings that are several times the earnings of Federal judges. Experience has shown that the judge who leaves the Federal bench will, within a very short time in the practice, have saved enough from earnings to provide income for his survivors far in excess of that which would have been provided if he had continued on the bench. In short, there is a vast discrepancy between the provisions made for surviving dependents of Federal judges and the provisions practicing lawyers are able to make for their surviving dependents.

As a former Federal judge, I can testify from my own personal experience that this is an important consideration, and one that worries Federal judges greatly, especially as they see the effects of inflation. I am frequently consulted by lawyers who are considering allowing their names to be submitted as candidates for Federal judgeships. Invariably these lawyers are concerned about the inadequate provision made for survivors of Federal judges. Often, until they have talked to me, they have not realized how small the benefits are, and, when they learn, they are dismayed. I am convinced that often this consideration, when added to the drastic decrease in earnings that accompanies the transition to the Federal bench, discourages many lawyers, from giving serious consideration to taking Federal judgeships.

Lawyers who serve as Federal judges do so at a severe financial sacrifice. To a degree, this is inevitable, and at any rate it is not the subject before this committee at this time. But to ask, not only this sacrifice, but that the judge accept the condition that his widow or dependent children will not be adequately provided for when he dies is to ask too much.

The legislation now proposed is a modest and conservative solution to a serious problem that saps the moral of the Federal judiciary. The American College of Trial Lawyers urges that this legislation be adopted.

Judge KAUFMAN. Judge Mulligan.

Judge MULLIGAN. I would like to say that I have submitted a brief statement to the committee, and my remarks will be even briefer.

For 25 years prior to going on the bench, I was a member of faculty and the dean of the Fordham Law School. When I went on the bench, the annual salary in 1971 was $42,500. After I had been on the bench sometime, inflation so eroded the spending power of the dollar that I wrote to the administrative court to determine what benefit my widow would receive when I died. I received the shocking news that if I died in the year 1980, my wife would receive the sum of $8,744 per annum. This was after I had served on the bench for 9 years, and I was also given credit for 3 years, 6 months, and 11 days of military service. I felt that that was unconscionable, that nobody could possibly live on that.

The testimony of Judge Williams indicates that people who entered on the bench the same year I did and did die left widows and families in dire economic need.

Therefore, I believe that if we are to attract judges to the bench, we must certainly improve this situation. Either the caliber of the bench will decline, or the bench will be reserved only for those who have independent means. Either alternative is bad.

I therefore sincerely urge the passage of these bills.

Mr. BRISKMAN. Thank you.

Judge Kaufman, do you have any additional remarks or comments for the record?

Judge KAUFMAN. No. I hope that there have been made part of the record the statement by Mr. Erburu, the chief executive officer of the Los Angeles Times Mirror and chairman of the American Newspaper Publishers' Association and ABA Joint Committee on the media and the bar and the courts, favoring this legislation and the statement by the president of the Business Roundtable.

Mr. BRISKMAN. Both will be made a part of the record.

Judge KAUFMAN. Thank you very much.

[The following statements of Messrs. Erburu and Bates were received for the record:]

TIMES MIRROR,
Los Angeles, Calif., September 22, 1982.

Hon. ROBERT DOLE,
Chairman, Courts Subcommittee,
U.S. Senate Judiciary Committee,
Washington, D.C.

DEAR CHAIRMAN DOLE: I wish to express my support for the enactment in this session of Congress of S. 1874, the Judicial Survivors' Annuity Reform Act of 1981. This bill and its House counterpart, H.R. 4763, would amend Section 376 of Title 28 of the United States Code to improve and reform the existing annuities for survivors of Federal Justices and judges.

I am writing this letter as an individual. In my role as President and Chief Executive Officer of the Times Mirror Company and as Chairman of the Press/Bar Relations Committee of the American Newspaper Publishers Association, I have had occasion to carefully review this legislation. The issue of adequate annuities for survivors of members of the federal judiciary transcends narrow pecuniary interests and, unless appropriately resolved, may have severe adverse consequences for the federal judiciary and the nation.

The woeful inadequacy of current survivors' benefits has been carefully and thoroughly documented. The present system began in 1956 when Congress created a fund to provide benefits to survivors of deceased judges and justices. However, this plan became actuarially unsound and in 1976 Congress amended the law. The purpose of the new legislation was to place the plan on a sound financial basis, provide for more liberal eligibility requirements and reasonable increases in annuity amounts, and allow for future increases. Although the legislation achieved the first two objectives, the third objective has proved elusive. Contrary to expectations in 1976, federal judges' salaries (which are the basis for a survivor's annuity) have not been increased. This has resulted in a plan which, for example, provides a survivor's annuity of only $2,289 per year after three years of service. S. 1874 would remedy this deficiency by establishing a minimum benefit of 30 percent of salary.

The bill remedies other inequities in the present system by increasing the maximum payment, improving benefits for surviving dependent children under 22, and allowing benefits to continue for a surviving spouse under certain circumstances after remarriage. These benefits will be funded by an increase in the contribution from income made by the judges as well as an increase in the government's share.

This is not a narrow issue. The record clearly demonstrates that simple fairness requires the additional benefits provided for in the bill. Failure to resolve this problem is likely to have enormous consequences for the nation. Continuing the status quo will inevitably lead to more resignations from the bench and increased difficulty in recruiting qualified replacements. Already a disturbing trend has been established: seven federal judges resigned in the 1950's, eight in the 1960's, twenty-four in the 1970's. In 1980 three resigned; in 1981 four. As former Second Circuit Judge William Mulligan aptly described the situation, he could "live on his salary" but not "die on it." We should no longer ask our federal judges to forego not only immediate compensation for themselves, but also sacrifice the financial security of his spouses and children.

Unless legislation such as S. 1874 is enacted, the quality and independence of the federal judiciary will suffer—perhaps irreparably.

We respectfully request that this letter be included in the hearing record.

Sincerely,

ROBERT F. ERBURU,
President and Chief Executive.

THE BUSINESS ROUNDTABLE,
New York, N.Y., September 16, 1982.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Because the Business Roundtable has consistently supported responsible efforts to reduce Government spending as an essential first step toward reviving the nation's economy, we rarely recommend legislative initiatives which will require increased expenditures. We believe your efforts to reform the judicial survivors annuities program available to United States judges, exemplified by S. 1874 in this Congress, constitute one instance in which incurring additional expense is justifiable. The additional expense involved, of course, is not great, and is more than offset by the proposal's merits.

Few individuals serving the Federal Government exercise authority as pervasively or as independently as do Federal judges. We believe the judiciary deserves the finest spectrum of talent, and we believe the Presidents must be able to interest the most highly qualified individuals in accepting nominations.

Judicial salaries are not competitive with the higher levels of private law practice. Therefore retirement and other supporting programs take on a greater importance. We believe your very limited proposals for correcting inadvertent errors in Congress' 1976 effort to modernize the judicial survivors annuity program make good business sense. They are moderate, reasonable, and relatively inexpensive. We support the proposals.

Sincerely,

G. WALLACE BATES, *President.*

Judge KAUFMAN. I would just quickly, if you want a statistic, simply tell you that another concern is the reduction in the number of people joining the annuities program now, meaning the new judges. In the year 1982, it is terribly disturbing and almost shocking, and I imagine the Administrative Office will submit some statistics to you, but I see here that of 76 new appointments in 1982, only 25 percent have joined the system because they find that insurance on the outside is probably a better buy.

So I would simply close by saying that I thank you, Mr. Briskman, for your attention to this, and certainly to the chairman, Mr. Dole, my old friend, Senator Heflin, who made the trip to England with us in 1980 as a member of the Anglo-American Exchange on Criminal Law. Little did I think at that time I would be making this plea on behalf of the Federal judges, but the Chief Justice joins in this, and it is on behalf of all of the judges of the country. We thank you.

Mr. BRISKMAN. Thank you.

[The prepared statements and additional submissions of Messrs. Kaufman, Williams, and Mulligan follow:]

Statement

of

IRVING R. KAUFMAN

Judge, United States Court of Appeals, Second Circuit
and
Chairman, United States Judicial Conference
Committee on the Judicial Branch

BRIEF SUMMARY OF MAJOR POINTS

1. The task of judging has become significantly more burdensome, in large part because of extraneous pressures and ~~worries~~ imposed upon the judiciary. Responding to this problem, Chief Justice Burger mandated the Committee on the Judicial Branch of the United States Judicial Conference to investigate and present specific recommendations for reforming the Judicial Survivors' Annuities Reform Act of 1976, 28 U.S.C. § 376. I chair that Committee.

2. Provisions relating to financial security of judges' dependents strongly influence the decision whether to accept or continue in a position on the federal bench, with the likelihood that the quality of the judiciary might be compromised.

3. The Committee on the Judicial Branch carefully examined the current law, and discovered that far too long a period is required to achieve annuity amounts realistic in relation to present economic conditions. The 1976 Act does not fulfill the Congressional intention that annuity amounts should increase in tandem with salary adjustments.

4. The Committee's research was assisted by the Martin E. Segal Company, a prominent actuarial consultant. The decision was made to implement the reforms contained in S. 1874. A new floor, or guaranteed minimal annuity, is established at 30% of high three-year average annual salary amount. The computation formula is changed from 1-1/4% to 1-1/2%, to create the year-by-year increases contemplated by Congress in passing the 1976 Act. The ceiling is placed at 50%. The anticipated cost to government is minimal; had the new computation been used, the additional cost to government in fiscal 1982 would have been only slightly more than one million dollars. Moreover, the changes do not benefit judges directly, and judges will bear an additional financial burden by their contributions for the improved benefits.

5. The federal bench in recent years has endured the litigation explosion. It has increased its efficiency to meet this problem. Moreover, we must not lose sight of the real danger that we might lose some of our most qualified judges because of the lure of significantly better benefits in private practice.

6. There is a relationship between inequities perceived by judges and dangers of erosion of the Article III judiciary as envisioned by the Framers. The outside financial pressures are precisely those meant to be avoided by the Compensation Clause and division of powers.

INTRODUCTION

I have been a federal judge for more than thirty-three years. I have tried many cases as a district court judge, have written many opinions for the United States Court of Appeals for the Second Circuit, and have been the Chief Judge of that Court. During those years, various special commissions and congressional committees have inquired into the compensation of federal judges. Often, these investigations produced compelling evidence that judges were in fact significantly underpaid; some of them resulted in reforms. I have generally not participated before these commissions and committees, believing that the nature of the judicial office counsels, in most instances, that members of the bench exercise restraint. But I am also convinced that judges have a duty to give legislators the benefit of their special expertise on matters concerning the strength and quality of the nation's judiciary.

As you may know, Chief Justice Burger has been at the forefront of efforts to ensure and strengthen the administrative efficiency of the federal courts. I, too, have written extensively on the topic and delivered the Cardozo

Lecture before the Association of the Bar of the City of New York in November 1978, titled Chilling Judicial Independence. My Cardozo Lecture was later published in 88 Yale L. J. 681 (1979), and I followed Chilling Judicial Independence with The Essence of Judicial Independence, which appeared at 80 Colum. L. Rev. 671 (1980).

Both the Chief Justice and I believe that no roadblock in the judicial process should be allowed to impede the constitutional and other rights of every citizen. Judges, therefore, must be able to perform the taxing duties, which try men's souls, free from interference by superfluous outside pressures. As I wrote in The Essence of Judicial Independence:

> Because of the unique position of the federal judiciary as the principal guardian of the rights conferred by the Constitution, encroachments upon its protected sphere must be weighed with acute sensitivity. The Framers of the Constitution went far beyond the British experience in their elevation of the judiciary to a co-equal branch of government. . . . Judicial independence is not a cliche conjured up by those who seek to prevent encroachments by the other branches of government. The term is one of art, defined to achieve the essential objective of the separation of powers that justice be rendered without fear or bias, and free of prejudice.

Moreover, and of transcendent significance: our system of government demands that the federal bench be comprised of the most talented members of the legal profession, men and women capable of managing the "explosive growth of litigation" involving the most sensitive and difficult issues.

The Chief Justice has received letters -- and the volume of such letters has rapidly increased from a trickle to a torrent -- informing him that the task of judging was simply becoming too burdensome for many judges in all areas of the country. Put simply, financial pressures and constant worry over them were diverting judges' attention from their primary responsibilities. Responding to this dilemma, and in particular to the vexing problem of inadequate survivors' benefits, the Chief Justice, exercising his constitutional duty as overseer of our nation's courts, created the Committee on the Judicial Branch of the United States Judicial Conference and mandated it to present specific recommendations for reforming the existing Judicial Survivors' Annuities law (28 U.S.C. § 376). Our Committee undertook that arduous assignment, and the result of our labors is the legislation before this Subcommittee. It is in my capacity as Chairman of the Judicial Conference Committee on the Judicial Branch, and as spokesman for a deeply concerned federal judiciary, that I deliver this statement today.

I do not plan to document at this time the precise extent to which judges' real disposable income has declined in the last decade. I leave that to others, such as the Administrative Office and the 1980 Quadrennial Commission report. I do note that the Commission singled out survivors' annuities for special mention, despite the fact that they were technically outside its mandate. The Commission stated that the annuities system was severely in need of reform. I, too, wish to point out the urgency of this problem. This bill, unlike other legislation affecting judicial compensation, will benefit not the judges directly, but rather their surviving spouses. Indeed, judges are shouldering an additional financial burden. Moreover, I would like to pause to emphasize that the inadequate current annuities not only affect the day-to-day lives of judges and their families, but also have the potential to influence the decision whether to accept or continue in a position on the federal bench. Every judge is constantly aware that his or her salary, and, more particularly, provisions relating to his or her dependents, will one day determine whether those survivors are to live relatively free from financial worry. Indeed, most federal judges are appointed in middle or early middle age, and the subject of survivors' benefits is therefore more prominent in their minds than it would be for lawyers embarking on a career at an earlier age. Surely we do not wish positions on the federal bench to become the exclusive preserve of those who have had the fortune to accumulate great savings, or who have inherited great wealth. It is for this reason, and because the issue of survivors' annuities presents a significant threat to judicial independence and the quality of the federal judiciary, that I briefly outline the extraordinary inequities of the current survivors' annuities system.

The Committee on the Judicial Branch began its task with a careful analysis of the Judicial Survivors' Annuities Reform Act of 1976. Our study of the legislative history of the Act revealed that Congress clearly intended not only to improve the existing program but also to make the new plan responsive to the need for increases in annuities in the future. One year before enactment of the 1976 Reform Act, Congress passed legislation authorizing annual "comparability adjustments" in federal judicial salaries, to be determined by the same formula then used annually to increase rates of pay for federal employees. When structuring provisions in the 1976 Reform Act, the Senate Judiciary Committee presumed that the regular annual impact of those salary increases would ensure "future periodic increases in annuity amounts," and that annuity adjustments would be made in tandem with salary adjustments. When the Reform Act's computation formula was applied to the resulting high three-year average annual salary amounts, however, annuities began falling behind intended levels almost immediately upon passage of the 1976 Reform Act. It is important to note, therefore, that the legislation proposed today is simply corrective, and designed to carry out precisely those aims Congress articulated in 1976.

The Committee then undertook a thorough examination of the provisions of the current survivors' annuities plan. Our research disclosed that an inordinately long period of service was required to achieve annuity amounts which are realistic for today's economy. Not until a circuit judge has served for twenty-three years would the base annuity for a spouse even approach $20,000; a district judge must serve for twenty-four years to reach that amount. For the past two decades, however, the average period of active service accumulated before death has been only 19 years. Furthermore, if death should occur during a judge's early years on the bench, his survivors could receive either nothing at all, or an annuity so infinitesimal as to amount to virtually nothing.

When a judge dies, some widows go penniless --

even where the judge has been contributing a portion of his salary, every month, for thirty years or more. For instance, if a judge who has recently remarried dies, his new wife will receive no annuity. If a judge who has been on the bench less than eighteen months should die, his widow, too, receives nothing. For those lucky enough to collect under this inequitable system, the benefits are meager -- only about $5,000 per year, for example, for the widow of a judge on the bench seven years. In addition, if a judge's wife should die before he does, and he has no need for a widow's annuity fund at all, the money he has contributed stays in the fund and, in one of the most unfair aspects of the system, is not refunded to him, but to his estate upon his death.

Shortly after beginning our research into the survivors' annuities system, the Committee secured the assistance of a prominent actuarial consultant, The Martin E. Segal Co. The company, using extensive records concerning the age of each judge, his dependents, his income history, and many other traits compiled by the Administrative Office, calculated the cost of a number of possible plans, the most cost efficient of which would implement four reforms.

First, surviving children would be divided into two classes. In the initial class, in which a surviving spouse is receiving an annuity, each child would receive either an annuity equal to 10% of a judge's "high average three-year salary" (defined as the total salary of his three highest earning years, divided by three), or an amount equal to 20% of that figure divided by the number of children, whichever is smaller. So, for example, if the high three-year figure were $70,000, one child would receive $7,000 per year, and each of three children would receive approximately $4,700 per year. In the second class, in which a surviving spouse is not receiving an annuity, the percentage amounts would be double those of the first class. This first reform, as to surviving children, would go a long way toward remedying the inequities of the current legislative scheme. Moreover, few judges die leaving children who have not reached the age of majority, and the additional cost to the government should therefore be minor. Under the present system, which determines annuities by statutorily designated amounts, a surviving dependent child could receive as little as $1,548 per year. The sum is paltry on its face, and when considered along with the effects of inflation over the years, it is disgraceful.

Surviving spouses could receive a comparably insignificant sum under the plan now in existence, or nothing at all in the case of a judge who served less than eighteen months. It is for that reason that the Committee incorporated into the legislation before you today, three additional reforms concerning spousal annuities. At present, the annuity is calculated by taking one and one-quarter percent of the high three-year average annual salary and multiplying that amount by years of service. Given this 1-1/4% formula factor, the statutorily mandated ceiling of 40% of average annual salary is reached after thirty-two years of service. Therefore, contributions made after thirty-two years purchase no additional benefits. In addition, the current plan provides no "floor" annuity amount. As the Segal Company pointed out, the absence of such a "floor" amount probably causes many judges to elect not to participate in the current program because it is simply too costly for the benefits it produces. Indeed, participation in the program has declined, as the statistics presented by the Administrative Office demonstrate.

To rectify these faults, the annuity computation factors are modified in the bill to "1 1/2-30-50" from "1 1/4-0-40." That is, a new floor, or guaranteed minimal annuity a surviving spouse will receive is established which equals 30% of the average annual salary amount. For instance, the survivor of a district judge with at least 18 months of service would receive a minimum of $18,310. The "ceiling," or limitation on the percentage of salary a surviving spouse may receive as an annuity is increased only slightly -- to 50% from 40% of average annual salary. Finally, the change in the computation formula to 1-1/2% is crucial because the computation figure has the greatest direct influence on year-by-year increases in annuity amounts, and the new number will carry out the congressional intent of the 1976 Reform Act, that annuity adjustments would keep pace with salary adjustments. Although the average yearly annuity would increase from approximately $12,100 -- the average sum paid during the 1981-82 fiscal year -- to approximately $19,800 -- the sum which would have been paid using the new computations, the overall cost to the program is not significant. The difference for the year ending June 30, 1982, had the proposed system been used, would have been only slightly more than $1 million. In any event, as I have said, judges will not personally benefit from the higher annuities. Instead, they will bear a greater cost then they currently do, to protect their dependent survivors.

The current annuities are inadequate no matter how viewed. They are clearly perceived to be so by judges, and for the first time in my memory, the threat to the quality and stability of the judicial branch has become acute. For years my brother and sister judges have endured the pay differential between themselves and lawyers in private practice with stoic silence, too proud to complain, and perhaps also overcautious in their belief that the public might regard speaking out on "mundane" money matters as unseemly. Even today, as their disposable compensation has slipped well below the $20,000 mark in 1969 dollars, judges are restrained in response. They do not write letters to the editor; they do not threaten work stoppages. They recognize the great importance of the task they are called upon to perform, and they are not inclined to deflect time and attention -- their own, or that of litigants or the public -- from that endeavor. The Chief Justice has remarked:

> Although every judge I know is prepared to sacrifice income to become a judge, and all of us are doing it, society in its own interest should insist on some reasonable degree of equity, an equity that has been denied to every judge in the federal system as inflation has been consuming the real value of compensation.

Judges have been conscientiously and mightily concerned with defending the rights of our nation's underprivileged, but they have been notably tardy in protecting their own.

I would not be presenting the true scope of events if I failed to note that the dangerous decline -- indeed, erosion -- of judicial survivors' benefits has come at a time when the federal judiciary is making significant advances in efficiency and workload. We have, to put it simply, been disposing of more cases in less time. A district judge, for example, in 1970, disposed of an average of 201 civil cases per authorized judgeship per year. By mid-decade the number was up to 262, and by 1980, it was 311. For circuit judges, the efficiency gains in the same period are equally impressive: 331 civil and criminal cases per authorized three-judge panel in 1970, and 475 in 1980. But, as the efficiency of federal judges rose fifty percent across the board, their compensation, and their confidence in their ability to provide for their surviving spouses and children, declined precipitously.

These caseload advances become even more striking when one considers not just sheer number, but character and complexity as well. In my thirty-three years on the federal bench, I have witnessed an extraordinary, and accelerating change in the quality of cases. More and more, the cases are complex and convoluted civil litigations. Their intricacies, and the sophisticated lawyering they entail, involve a judge in the most detailed analyses of entire industries. I wrote the opinion for the Court in Berkey Photo, Inc. v. Eastman Kodak Co., a case of truly Byzantine complexity. The case involved the Court in issues of both economic and technological importance and difficulty, for we considered the mechanical operation of various camera components on the cutting edge of technology, and then analyzed their impact on complex national markets. In Diamond v.

Chakrabarty, the Supreme Court affirmed the patentability of a living organism, and in doing so was forced to appraise the directions which biogenetic research might take in the next few years. Just recently, the high court agreed to decide whether home video recording violates the copyright law, a question which obviously implicates important economic interests, privacy matters, and broad questions of social policy. With the increasing technological complexity of business and life generally, cases which require considerable scientific and economic sophistication have become the rule, rather than the exception. The most supple minds are necessary for their correct adjudication. Moreover, as Learned Hand said, judges are called upon to "see" into the future; they "must discover some composition with the dominant trends of [their] time -- at all hazards [they] must maintain that tolerable continuity without which society dissolves." With these twin concerns in mind -- cases of increasing complexity, magnitude, and importance, and the delicate obligation to future generations -- it is clear that the downgrading of the federal courts could result in serious harm to the nation.

Nor is this trend limited to complex civil litigation. Our courts are frequently confronted with multiple defendant criminal trials and appeals, often in conspiracy cases, which present tangled webs of evidentiary issues which we are required to unravel.

The most direct result of the deep disparity between the pressures on federal judges and the woefully inadequate benefits provided their survivors is the increase in judicial resignations. In the 1950s, my first decade on the bench, seven federal judges resigned. In the 1960s, eight resigned. In the 1970s, just as inflation began to erode the real income of a judge at a truly frightening rate, no less than twenty-four judges left the bench. Unless changes are made, every reason exists to believe that the 1980s will be even worse: In 1980, three judges resigned, and in 1981 four resigned. Judges who resign are men and women of talent and ability and, most of all, experience. The average judge who resigns has served 7.6 years. Moreover, the average age at resignation is only 56. In forcing a judge to leave the bench we, therefore, deprive the American people of years of accumulated wisdom, and the most productive and useful years during which a judge can serve. This is the period when his experience is sufficiently diverse and full-bodied to enable the judge to respond to a wide range of difficult issues; at the same time, the judge is young enough to begin to develop a jurisprudence and experience that can flower and accumulate during the extremely productive years beginning in middle or early middle age. I do not mean to imply that every judicial resignation has been the result of inadequate salary or survivors' benefits. I do not know that to be the case, but I have certainly seen letters, for example, which cite inadequate compensation as "one of the principal reasons." These factors are surely in the mind of each of the resigning judges, and, I must add, in the mind of every federal judge who remains. The damage is profound, in both senses of that term: it runs deep, affecting the morale and independence of the federal judiciary, and it is depriving us of many of our most able brothers and sisters.

The destruction wrought by current annuity levels was most strikingly brought home to me in a very personal way. Last year, after ten years on the bench, my friend and colleague, Judge William H. Mulligan of the Second Circuit announced his resignation. Judge Mulligan was frank about his reasons, and his words are clearly addressed to this Subcommittee and to the Congress of the United States:

> My choice has been made not because of any dissatisfaction or disaffection for this court, my colleagues or the profession which practices before it. I have enjoyed thoroughly the challenge and responsibility as well as the personal and professional association with so many fine and dedicated persons.
>
> At the same time, inflation has rendered continued judicial service inequitable. While federal judges serve for life at full salary, the benefits awarded to their surviving widows are shockingly low. The failure of President Carter to accept the recommendations of the Quadrennial Commission was disappointing and in my view, short-sighted. Even had those recommendations been accepted in full, federal judges would not have received any real increase but would still be receiving considerably less than the salary which was received in 1971 when I joined the bench.
>
> In order to attract competent and experienced lawyers to service on the federal bench, they must be compensated at significantly higher salaries than those now afforded. Moreover, adequate provision must be made for their surviving spouses. We have reached the point where only those with substantial independent means can accept judicial appointment. Having devoted practically my entire professional career to legal education and judicial service, I am not in that category. My primary concern is the welfare of my family and at this point in my life, I cannot in good conscience continue to serve.

Judge Mulligan later said that he had been tempted to call President Reagan and request that he reconsider the resignation, so fulfilling had been his time on the bench. But he realized that, "in sum, . . . while I could live on the salary of a federal judge, I could not die on it."

Judge Mulligan was an exceptionally able judge, and as I have noted, an esteemed colleague and a valued friend. It will not surprise me if others follow Judge Mulligan's course. All of us receive offers which grow more enticing with each passing day. In my own case, the ease, freedom, and income of private practice are attractive to me -- and have been offered by several of the leading firms in the country. I hope never to have to confront resignation. My love of the federal courts, and of the constitutional principles they so zealously protect, and the extraordinary challenge presented by the cases we review, sustain me on the bench despite the meager survivors' benefits. But that same love of justice makes me shudder at the resignations and discontent that now threaten the federal bench. Like other Americans, judges must eat, must pay exorbitant -- and rapidly rising -- medical bills and tuition fees for their children and the financial obligations of their survivors will, of course, continue after death. If survivors' annuities remain inconsequential, judges will resign. You have the power to prevent this waste of our great legal minds. As Congressman Kastenmeier, Chairman of the House Judiciary Committee's Subcommittee on Courts, Civil Liberties and the Administration of Justice has stated upon introducing companion legislation [H.R. 4763]:

> If not remedied, defects in the annuities system will make it very difficult to attract qualified individuals to the bench. The Reagan administration has already learned the reality of this proposition. In addition, regardless of its inherent strength, the Federal judiciary suffers severe damage when individuals are forced to leave

> the bench for greater compensation elsewhere. This has occurred recently, and we should act to prevent it from happening again.

I urge you to use the power at your disposal.

The resignations are only the beginning of the damage wrought by inadequate survivors' annuities. I referred earlier to the morale of the federal bench, and I believe that the erosion of that morale is pernicious even if not quantifiable in the way resignations are. For years the honor and prestige of being a federal judge compensated for inadequate benefits. But it is not hard to imagine the effect on the enthusiasm of a judge who is confronted with the knowledge that his departing law clerks, just one year out of law school, may choose to enter a major New York law firm and receive nearly $50,000 in salary in their very first year in practice (not to mention the perquisites, including life and health insurance) and in approximately three years be receiving nearly the same income as a district judge.

Further, the state courts treat their judges in a way that shows foresight and long range sensitivity lacking in the federal system -- virtually without exception, the states have given higher percentage salary increases than the federal government over the last ten years. Some of our greatest federal jurists have come from the state to the federal bench (Holmes and Cardozo are conspicuous and particularly striking examples), but one wonders if this will remain the case.

Because I have emphasized that my focus as a federal judge is the Constitution, perhaps I should digress for a moment and note that the subject before this Subcommittee today has been a special concern throughout our history, and is embedded firmly in Article III of that document. Article III provides that federal judges' compensation "shall not be diminished during their continuance in office." My research into the historical origin of the provision has revealed a common-sense background for it. Indeed, as I noted in Chilling Judicial Independence, "one of the grievances against George III listed in the Declaration of Independence was: 'He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.'" Hamilton, in the Federalist, No. 79, stated:

> In the general course of human nature, a power over a man's subsistence amounts to a power over his will. And we can never hope to see realized in practice the complete separation of the Judicial from the Legislative power, in any system, which leaves the former dependent of pecuniary resource on the occasional grants of the latter.

Well aware of the evils that flow from excessive concentrations of power, the Framers limited the power of any one branch by structuring relations among them so that the operations of each would be properly channeled. The tenure and salary provisions in Article III are among the checks and balances that preserve this separation of powers, and concomitantly, ensure that talented people will wish to serve within the judicial branch. That is, the genius of our constitutional separation of powers is that it provides for the most pragmatic form of security -- financial security -- for the purpose of engendering a more subtle and crucial security: the security of the judicial branch to render its opinions in cases presenting complex and troublesome issues of the day, free from the interference of the other branches. This, in brief, is what I mean when I say that inadequate survivors' annuities threaten the ideal of a strong and independent judiciary. I believe deeply that unless we are able to attract and retain the best legal minds to and in our courts, we will effectively sacrifice one of our most venerable and valuable treasures -- the United States Courts. Judges must have adequate security that their survivors will be provided for, because if they are not given such assurances, we will, in the not too distant future, reduce the quality of the men and women who hold judicial office. We will then, necessarily, have reduced the quality of justice available in the courts of this land.

Unlike members of Congress, judges do not have the opportunity to move constantly back and forth between a meager set of federal survivors' benefits and the better benefits which they could garner as members of the private bar. The essence of the judiciary is the sacrifice of this mobility; the Framers clearly feared that the "revolving door" would unravel the judicial independence they so carefully wove into every section of our constitutional tapestry. As I have already indicated, one of the Framers' most brilliant stratagems was to arrange for a system which would put judges on the federal bench for a long period of time, in which they could evolve a mature, reasoned, and integrated jurisprudence. We must not permit this to be replaced by brief terms of office. The Framers wanted judges to be remote -- not out of touch with the lives of their fellow citizens surely -- but apart from the vicissitudes of commerce and quotidian life. When judges are forced to resign, and the traffic between the bench and private life becomes heavy, that separation is impaired, perhaps irreparably.

Judge Mulligan in resigning singled out survivors' annuities for special mention. He stated, "the benefits awarded to [judges'] surviving widows are shockingly low." The Quadrennial Commission reached the same conclusion. As Chairman of the Committee on the Judicial Branch, I have learned of a federal judge who informed his Senator that,

> [when] I learned of the survivors' benefits of a federal judge, I was shocked and had I known this information before [my nomination], I would not have solicited, sought, nor accepted the appointment. . . . In the event a state judicial vacancy comes open, I will be sorely pressed to consider resigning from the federal bench and seek the state position.

Judges will become more and more concerned with the disservice done to their survivors, and, I believe, we will see more resignations accompanied by statements such as Judge Mulligan's: "I can live on it, but I can't die on it." That is, "I simply cannot foresake my family's needs." Under the Code of Judicial Conduct, a judge may not serve as a director of a corporation, accept most gifts, or serve as a trustee for the estate of anyone outside his family. Of course, I do not recommend any relaxation of the strict and special constraints on judges' outside income. I recognize the value of such restraints. In fact, I was a member of the ABA committee which drafted the Code of Judicial Conduct. I simply note that the limits are present, and naturally will enter into the calculus when judges determine whether they can "afford to die" on judicial survivors' benefits. Members of the bench are willing to bear a portion of the overall additional cost. Surely this willingness is a measure of the seriousness of the problem.

I urge you to return judges to a reasonable level of survivors' benefits that will not further cripple the great federal courts of our country, by revising and reforming the statutory mechanism now in place. The federal judiciary is an institution I love with every fibre in my body. Over the last thirty-three years, my wife, my children and grandchildren, and I have sacrificed untold thousands of dollars which I would have received in private practice. I do not regret my career choice over these thirty-odd years for one instant; my term on the bench has brought me an unrivalled opportunity to place my imprimatur on the interpretation of the Constitution, to protect the less fortunate, and, above all, to feel professionally fulfilled. It has endowed me with friendships among those talented individuals we call federal judges.

In sum, the point is simply this: in light of the importance of the decisions that federal judges make and the power they exercise, pursuant to the commands of Article III of the Constitution, it is imperative that we continue to attract the very best people to the federal bench. Are the courts to become, as many of us fear, a special province for the rich? Or, on the other hand, will we permit them to become a refuge for those who are simply not in demand in the upper ranks of the profession and therefore want to be federal judges because, meager as the salary and survivors' benefits are, they are greater sums than those men and women have ever seen before or are likely to see again? The decisions rendered by my court and the other circuit and district courts affect our entire population and reach across the geographical breadth of the continent. The New York Times has referred to these courts in an editorial as "a jewel among American institutions." I ask that you not permit it to lose its luster.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
UNITED STATES COURT HOUSE
WILLIAMSPORT, PENNSYLVANIA 17701

MALCOLM MUIR
JUDGE

October 1, 1982

Honorable Irving R. Kaufman
U.S. Circuit Judge
U.S. Courthouse
New York, New York 10007

Dear Judge Kaufman:

I am indeed grateful for your activities and the Committee on the Judicial Branch. I have a particular interest in the question of survivor's benefits.

My son, David Clay Muir, was injured in 1973 when he was shot in the eye by a drunken fireman with a high pressure fire hose at a range of five feet. The trauma and the subsequent operations precipitated a mental collapse from which it is unlikely that he will ever recover. He is totally dependent on me. It is my understanding that if my wife were to predecease me, my son's survivor benefits would approximate $1450.00 per year.

There could not be many more glaring examples of the inadequacy of a survivor's benefits.

Very truly yours,

Malcolm Muir

STATEMENT OF
JUDGE SPENCER WILLIAMS

SUMMARY

Judge Spencer Williams of San Francisco who is representing both the newly-formed Federal Judges Association and the Ninth Circuit District Judges Association urges favorable action on S. 1874. He says that the present program of survivors benefits is so bad that it is embarrassing: $305 per month for a survivor of a deceased judge who has served five years; $712 per month for the survivor of a judge who had served ten years. And $125 additional per month for each minor child up to three.

The statement encloses a letter from Mrs. J. Blake West, whose husband died after seven years of Federal judicial service outlining her difficulties in trying to raise their children on the niggardly judicial survivors program.

Judge Williams asserts that while the proposed bill is a positive step in the right direction, it still falls far short of programs offered the survivors of partners in most private law firms.

Judge Williams also argues that while the great bulk of the benefits of the new legislation will go to the younger judges, the great majority of all judges support the measure since it should enhance the ability of the Federal judiciary to attract and retain the best qualified men and women for Federal judicial service.

INTRODUCTION

My name is Spencer Williams. I am a United States District Judge from San Francisco and appear before you today representing the District Judges Association of the Ninth Circuit, of which I am President and the newly-formed Federal Judges Association, of which I am also President.

The members of both associations are pleased and grateful that this committee has requested an expression of their views on this most important legislation.

The Ninth Circuit District Judges Association consists of 97 active and senior district judges in the Ninth Circuit. It has been in existence approximately twelve years. It was the first association of this type in the Federal judiciary, and all circuits except the First, the Second and the District of Columbia now have similar associations.

The Federal Judges Association was organized and incorporated this year. It consists of approximately 240 active and senior Article III judges from the various District, Circuit and Special Courts in the Federal judiciary. It considers itself a "grass-roots" organization, and its stated purpose is to seek the highest quality of justice for the people of the United States. Its Constitution declares that preserving and protecting the ability of the Federal judiciary to attract and retain the best qualified men and women for judicial service is critical to its success in attaining its stated purpose.

And that is why I am here today.

We believe that persons who are considering either joining, or leaving, the Federal Bench will weigh, among other things, what effect their decision will have on the well-being of their survivors.

The decision of a candidate for judicial office to seek or accept a Federal judgeship, and the decision of an incumbent judge to stay or not to stay in judicial office when faced with lucrative and otherwise attractive offers to return to private practice, turn in large part on what each must give up in the way of income or other benefits, in exchange for the honor, the privilege, and the satisfaction of serving his or her Country in this most important office.

An additional, and equally compelling question is what that candidate, or incumbent, will require his or her spouse and children to give up so that he or she may accept or continue to perform judicial service.

The program presently offered the survivors of deceased Federal judges is so bad that it is embarrassing.

Under the present program the survivor of a deceased judge would receive 1-1/4% of the deceased judge's annual salary for each year of the deceased judge's service. In other words, assuming a salary of $70,000, the survivor of a judge who served five years would receive about $4,375 per year ($306 per month). After ten years it would go to $8,550 ($712 per month). Survivors would receive an additional $1,500 ($125 per month) for each minor child up to a maximum of three.

These figures are bad enough. But for those who have had to go through this embarrassment, the unforgivable tragedy is cruel and stark.

In 1971 two very bright partners of a large New Orleans law firm left private practice to become Federal judges. Both were exceptionally fine catches for the Federal judiciary. They were Judges R. Blake West and Jack M. Gordon. I happened to know them both personally, having attended judicial boot camp - officially known as a Seminar for Newly Appointed Federal Judges - with them. In any event, we became friends and kept in touch as best we could over the years. Judge West died after seven years of service, and Judge Gordon died this Spring, after eleven years of judicial service.

I contacted each of their widows and asked them to comment on the problems of trying to survive on the Judicial Survivor's Annuity. The letter of Mrs. Blake West is are attached for the record and I ask leave to supplement this statement with Mrs. Gordon's letter when it arrives.

Neither of these ladies would have spoken out if I had not contacted them. Neither has anything to gain or lose by their comments because this legislation will not help them in any way. They were willing to tell their stories in the hope that some future survivors of deceased judges will be spared the agony and embarrassment that befell them.

Gentlemen of the committee, it could be argued that their husbands came on the Bench with their eyes open . . . and that although it's tough, it's just the rub of the green, as they say in golf . . . too bad! Of course the answer is that present survivors will not benefit, only future survivors . . . and that solving this problem may make the difference of whether a highly qualified candidate accepts or rejects a federal judgeship, or whether a sitting judge will stay on the Bench, or resign. I am sure there are many judges and lawyers in the Second Circuit, the distinguished Judge Irving Kaufman among them, who felt a great loss when Judge William H. Mulligan resigned. And although his quotation has been repeated often, I believe it should be repeated one more time to help make my point, for he said: "I can afford to live on the salary of a Federal judge, but I can't afford to die on it."

And furthermore, and as a matter of national pride, we should not tolerate the idea of ever again having to create make-weight jobs so that the impoverished widows of Federal judges--or supreme court justices--can survive.

While the bill before you today would not solve all the problems, it goes a long way in that direction, and I commend its authors, as well as Chief Justice Warren Burger and Judge Irving Kaufman for their individual and collective effort to right this wrong . . . to remedy this disgraceful situation.

S. 1874 will increase each district judge's contribution from approximately $3,150 to $3,500 per year. Circuit judges and Supreme Court Justices would pay proportionately more. The Bill would also increase the benefits earned for each year of service from 1-1/4% of annual salary to 1-1/2%. The kicker, however, is that it would provide for a minimum allowance of 30%, or $21,000 for the survivor of a district judge. The maximum would be 50% of salary, or approximately $35,000 . . . (which would take between 33 and 34 years of judicial service to earn). Neither would put a survivor in the lap of luxury, but we are not seeking luxury, only equity.

In preparing for today's presentation I called some of San Francisco's larger law firms and asked how they provided for the survivors of deceased partners. The information received to date is insufficient to support any solid conclusions, but a pattern does seem to exist:

- most of them carry group life policies on the partners. These are paid for by the firm and run as high as $500,000 per partner.
- most provide a spouse will receive the decedent's vested share in the partnerships (accounts receivable plus work in progress).
- most take maximum advantage of Keogh Plans.
- individuals often supplement this coverage at their own expense.

Furthermore, while attributable to their individual higher earning power more than to any other single factor, survivors of these partners will receive two to three times the annuities received by survivors of Federal judges, even under the greatly improved plan contained in S.1874.

The great bulk of the benefits of this bill will, of course, go to the younger judges, whose survivors benefits will jump from 2-1/4% of salary after 18 months, to 30%. The judge who has served 20 years, or more, will receive comparatively little in return for his increased contribution. But the older judges I represent wholeheartedly support the measure because they believe it will help preserve the quality of the Federal Bench, and that is foremost in the thinking of every judge who has discussed this matter with me.

The judges for whom I speak sympathize with Congress over the difficult budgetary problems it must face during these trying times. One is compelled to ask "How can anyone ask for a budgetary increase, or a program improvement during these times when so much trimming has already been done, and even more reductions are sought?" And I personally empathize with Congress over this problem, having been through the same struggle . . . although from the executive branch perspective . . . in California during the late sixties. However, we found out then, and know now, that sometimes we can save money by spending money. Although the actual savings realized by keeping a Tech Sergeant, or a Chief Bosun, or a Doctor . . . or a judge on active duty rather than allowing them to retire, or quit, are difficult to quantify . . . most of us admit the savings are real, and the expenditure justified. Keeping that experience on board usually has positive cost effective results.

Gentlemen, this concludes my remarks. I again want to say thank you for this opportunity to bring the views of the members of these two associations to your attention. If you have any questions to ask, I will endeavor to answer them. Thank you.

Mrs. Blake West

September 15, 1982

United States District Judge Spencer Williams
Room 17057
450 Golden Gate Avenue
San Francisco, California, 94102

Dear Spencer:

When Blake died in January, 1978, after seven years on the Federal Bench, he was survived by myself and four children: two in college, one in his senior year in high school and a daughter who had just graduated from college. After his death my problem was not only how to live myself but how to see to it that all three of the younger children continued their education. This obviously was impossible on the approximately $550.00 per month we were receiving from the Judicial Survivors' Fund. I went to work as a saleswoman in a local store, the children worked both part and full time, we used the entire proceeds from Blake's life insurance and after two years sold the family home. Four years have now passed since his death; most but not all of the educational burden has lifted, all of the children have reached the age of twenty-two (the cut-off point for any Judicial Survivors' Benefits), we have used all monetary resources and I am receiving $308.00 per month as Blake's sole eligible survivor.

With the happiness of Blake being appointed as United States District Judge we did not look ahead to foresee that this could happen. I hope that the Judicial Survivors' plight will be remedied so that no able attorneys, which the Federal Bench needs so much now, would ever be deterred from accepting one of this Nation's most honoured positions.

Most sincerely,

Tibby West

STATEMENT OF WILLIAM HUGHES MULLIGAN

In May 1971 by appointment of President Nixon and with the advice and consent of the Senate, I was appointed a Judge of the United States Court of Appeals for the Second Circuit. For 25 years prior to that appointment I served as a faculty member at the Fordham University School of Law in New York City and for the last 15 years of that period was the Dean of the Law School. In addition to my faculty and decanal responsibilities, I was a member of the New York State Law Revision Commission, a Director of the Twentieth Century Fox Film Corporation, served as an arbitrator for here and abroad and sometimes was retained as counsel by New York Law firms. When I was appointed to the Court the annual salary for a Circuit Judge was $42,500. My resignation from the Law School and the termination of all the named professional activities resulted in a substantial loss of income. My wife and I nonetheless decided that this opportunity to serve on a distinguished court, plus the modest savings I had achieved, would permit us to live in a manner appropriate to the station.

However, severe inflation began to erode significantly the purchasing value of the dollar and after six or seven years it became clear to me that whatever capital had been put aside was diminishing and that interim raises fell far below the rate of inflation. While I could look forward to my full salary for life, an undoubted benefit for a federal judge, my concern was for the welfare of my wife and those of my family who were totally or partially dependent upon me for support, after I died. I made written inquiry of the Administrative Office of the Courts and on June 28, 1978 I was advised that if I should die in 1980 my wife's annuity would be $8,744 per year. The maximum she could expect at that time would be $23,000 per year in 1999 which would depend upon my living to be 81 years of age. That annuity was based upon not only my years of judicial service but 3 years, 6 months and 11 days of military service in World War II.

It became clear to me that absent substantial capital which I had not been able to amass, having devoted myself substantially to an academic career, a decent respect for the welfare of my family required that I enter the private sector of the profession. I resigned on April 1, 1981 and commenced as a partner in the New York law firm of Skadden, Arps, Slate, Meagher & Flom. When I resigned I announced publicly my reason for leaving -- while I could afford to live on my salary I could not afford to die on it. I should emphasize here that I loved my work on the court, I enjoyed my association with my colleagues on my court and on the district court as well. I was not greedy, I was not bored and I believe that my work was respected by the Bench and the Bar. At the age of 63 it was not easy to make a career change. My decision was not made without anguish. Nonetheless I felt that I was morally compelled to resign by the facts that I have related.

The Bills before you ameliorate to some extent the problem I faced. They certainly do not eliminate it but we are fully aware of the economic stringencies. I firmly believe that if the federal bench is to continue to attract the best in the legal profession, it is urgent that legislation like this be enacted lest the federal judiciary decline in quality or its membership be limited to those who have substantial independent means. I do not think that either alternative is acceptable. I therefore urge your favorable consideration.

Mr. BRISKMAN. The committee will stand in recess until Chairman Heflin can return for the last panel. It will be about 5 minutes.

[A short recess was taken.]

Senator HEFLIN. Our third panel of witnesses today will testify on S. 2296, concerning review of the Workmen's Compensation Appeal Board decision. Under current law, the determination made by the Employees' Compensation Appeals Board is final. The purpose of S. 2296 is to provide that the U.S. district court have jurisdiction over appeals of the Board decision. Under the current system, a decision made in abuse of discretion is not reviewable. This legislation will remedy that situation. This bill further provides for a procedure for awarding of attorneys' fees for services rendered in connection with such claims.

I would like to welcome our witnesses from Alabama, and I would like to comment that I see that there is present now the old law firm of Heflin, Rosser, & Hamby. [Laughter.]

It is indeed a pleasure to welcome Mr. Robert Potts, an outstanding attorney of Florence, Ala., to this meeting. I probably ought to ask you how the Governor's race in Alabama is going to come out, but maybe we had better not get into that.

All right. We will start with you, Mr. Potts. Do you want to tell us some of the problems in this area and what solutions are needed for the problems?

STATEMENTS OF ROBERT L. POTTS, ATTORNEY, FLORENCE, ALA.; GENE M. HAMBY, JR., ATTORNEY, SHEFFIELD, ALA.; AND CHARLES ROSSER, ATTORNEY, TUSCUMBIA, ALA.

Mr. POTTS. I sure would, Senator. Thank you for allowing me to come up today and testify.

Of course, we are dealing basically with a workmen's compensation law here today, which all of the States have, and of course, the Federal law was adopted back in 1916. These laws grew out of a concept in Germany in the 1880's, which was later adopted in England, and they had one purpose, and this law we are dealing with today has one purpose, and that is to provide employees who are injured in the workplace and their dependents a speedy source of funds with which to pay medical bills and to meet immediate and, in some cases, long-term financial needs, without regard to cause, as far as the cause of the accident is concerned.

If you measure the Federal Employees' Compensation Act against this standard today, it is doing a very poor job, especially in our area of the country. Of course, we do not have access to the statistics nationwide, but based on my experience in the past 11 years in employee and labor-related cases, I can tell you without reservation, that these amendments which are encompassed in this bill are sorely needed.

Delays of over 2 years in processing claims have been commonplace. There has been some improvement, slight improvement, in the last 1 or 2 years, but one of the problems compounding this is inability of claimants to obtain legal representation to assist them. This results from the obvious antilawyer bias of the Office of Workmen's Compensation Programs, and the current state of the law, where any small attorney's fee which may ultimately be approved by the Office of Workmen's Compensation Programs must be collected directly from the claimant, usually long after he has received his past due benefits and spent them. Add to this the fact that there is no court to review the delay and indecision in the administrative process, and the result you have is total havoc and despair in the lives of many formerly productive Government workers, caught in a morass of bureaucratic indecision, redtape and delay, and during the interim, losing their property, their farms, their automobiles, and their homes.

Rather than merely speaking in the abstract and to buttress my testimony, I obtained permission from four individuals to use their cases as examples. I am not going into all of the details that I have set out in my prepared statement because of the limited time that we have. I ask that my prepared statement be made a part of the record.

Senator HEFLIN. It will be so made.

Mr. POTTS. I will simply give an outline of these cases.

The first man is Vaughn Owen Cook, from Counce, Tenn., who was injured in 1972. He was a pipefitter. He filed his claim for compensation in 1976. He retained an attorney to assist him with it. Letters would go unanswered from the Florida office of the Office of Workmen's Compensation Programs, months and almost years at a time. Finally, after much bureaucratic hassle and redtape, in 1979, without notice to his attorney, Mr. Cook was mailed a check for $41,335, and his monthly payments were commenced. Mr. Cook, after he saw that money, decided that he did not want to put any of that into a trust account for any attorney's fee. His attorney had worked long and hard. Eventually, after reducing the claim for attorney's fee to a great extent, in October 1979, OWCP approved a small fee for the attorney. The office in which this attorney practiced, which happened to be our office, made the decision from that point forward, without some extraordinary circumstances, that there would be no more of this type of case handled.

I think if you were to do a survey of attorneys in the Tennessee Valley area, or in the area that deals with the Jacksonville, Fla., office of the Office of Workmen's Compensation Programs, you will see that very few will handle these types of claims, simply because of the delays and the discourtesy that is received. I have placed calls myself to their office and have been placed on hold, on long-distance at my expense, and never had a person answer back in 10 or 15 minutes. I have written letters that are answered up to a year after I write them.

Another example is Jack Whitten, of Laurel, Miss., formerly of Florence, Ala., and Limestone County, Ala.

He was injured in 1973, continued to work, and had problems with his compensation. I have submitted letters that he wrote with the assistance of a labor union employee, to various people around the country. Finally, without the assistance of attorney, in 1978, he obtained benefits, workmen's comp benefits. In the meantime, he had called the compensation people and asked them whether or not he could retrain for another job, and if so, whether that would be any problem. He understood them to say no. He knew a person who had received a scheduled award who was able to receive that award and obtain earnings also. He did not understand the technicalities or the differences between a scheduled award and an unscheduled award, and he began to make earnings in about 1977 from serving as a self-employed insurance agent. Suddenly in 1981, he received a letter from OWCP requesting an immediate check for $74,898.57 for an alleged overpayment of compensation. The result is that he is being investigated by the U.S. attorney now. He has no court review of this decision of OWCP to require him to repay this amount.

There is a provision in the current law that says if the overpaid amount is paid without fault of the recipient, that it can be excused, and of course, he has an administrative decision pending on that issue now.

The third example I would like to mention is Mr. A. D. Williams, who was denied benefits after being kept in limbo for about 3 years.

The fourth example is a man named Frank Dyer, in Reagan, Tenn., who this minute is about to have his home foreclosed upon. There were problems within the agency where about four or five claims were not sent to OWCP. He has been waiting since April for some type of relief. The exhibits are attached to my testimony. There is just simply no excuse for the situation where a man has given years and years of service to the Government, is injured on the job, and then he waits months and months for his money, and in the meantime is faced with losing all of his property, depleting all of his savings, and seeing his children drop out of college because of lack of parental financial support.

This bill before you will go far toward alleviating the outrageous situation that now exists.

I think first, by and large, the working people have a great deal of confidence in our Federal court system. They believe, and I think rightly so, that they can obtain a full and fair hearing there, where they do not have the same confidence in OWCP administrative procedures.

I think also, your offices and the offices of Congressmen in the area would have a reduced caseload if this act were adopted.

Second, I think the mere fact that Federal courts would review these administrative cases would have a salutary effect on the employees of OWCP. I do not know many Federal judges who would countenance a delay of 2 to 3 years for processing relatively simple claims, and I do not think it is too much to expect of OWCP that it render decisions promptly.

Third, I think that the provision for withholding attorneys' fees from past due benefits, although still allowing the Department of Labor too much discretion, is a great improvement over the current situation, and if passed, would make legal representation again available to compensation claimants.

I hope, for all of these reasons, that you will report S. 2296 favorably and secure its passage by the Senate.

Thank you.

Senator HEFLIN. Mr. Potts, you bring up the Jacksonville, Fla., office, and I, from personal experience, can affirm what you have said. They will not return a phone call. It takes them months and months to answer a letter. I know one time, when I was practicing law, after I had been on the Supreme Court and been Chief Justice and I returned—I do not remember the man's name, but I phoned down there, and left word for this person to return, and I never did hear. Finally—and I still was called by people Chief Justice—so I left word to return the call to Chief Justice Heflin. I never did get any return to it. I do not know whether the thing has improved, but a load of dynamite ought to have been put under that Jacksonville office, from my own personal experience.

Mr. POTTS. I do quite a bit of administrative law, Senator, and of course, have a lot of dealings with the Social Security Administration. There are many other agencies with caseloads just as high or higher, that give you courteous treatment and a fairly prompt reply. I think that citizens have the right to expect that from our governmental agencies.

Senator HEFLIN. We are delighted to have Mr. Charles Rosser, my former law partner of many years, and Mr. Rosser, we are delighted to hear from you at this time.

Mr. ROSSER. Thank you, Senator. I am very proud to be here, especially to discuss this topic.

I cannot add a whole lot to what Mr. Potts has said, except this, that he is lucky if he can get this handled in 2 or 3 years. One that I mention in the statement I sent, a case that was referred to me by another lawyer because he did not know much about handling them, the claimant had been trying for 4 years on his own to get some compensation, and probably had written every Senator and Congressman in Washington letters, and probably took up a lot of your time that should not have been taken. Then, I began to try to help him, and after about a year, I was able to help him. Five years it took for him to get compensation.

The reason they denied him was the silliest thing you ever heard. The schedule says if you lose your arm, or partial loss of use of your arm, then you get *x* number of weeks' compensation. The trauma was to his neck. A rock had fallen and had hit him in his neck, and the result was a partial loss of use of his arm. For 4 years, they had said to him, "You did not get your arm hurt. You got your neck hurt. It is of no consequence that the result was to your arm. The schedule calls for injuries to the arm, and you did not get an injury to the arm, so we are not going to pay you."

After 4 years, he came to me, and we made them pay him. Of course, when they paid him, they sent the money to him, and it was 6 or 8 months before I knew they had paid him, and when I called him and said, "Send me a fee," he thumbed his nose at me. Two years later, they approved a fee of $600. The value of the award was $27,000. My letter that I wrote back to Robert Burdine, the lawyer who had referred it to me, when it was all over, the last paragraph in it said, "This is the last Office of Workmen's Compensation case I will ever take, Robert, and I suppose that is the result they desired." And it is.

They told us at a meeting in Huntsville 2 or 3 years ago—there were about six or eight people from the Jacksonville office—and they openly admitted to us that their policy had been to drag their feet, to refrain from returning lawyers' calls, and do things like that when lawyers get into a case—the reason being to discourage lawyers from getting into cases—and it worked.

They did promise us, the Jacksonville bunch, that they would do better, and that they would change their policies, but they have not, not that I can see.

The worst thing about it, though, it appears to me is, if you have people who will not call a lawyer, who will trick the lawyers, who will take 5 years to adjudicate a simple claim and will deny a claim on such a basis as that, that same person has the power to order a client to dismiss a third party lawsuit, a McCormick lawsuit—I do not know if you are aware of that. Section 8,131 says that, "The Secretary may require the beneficiary of a third-party claim to assign it to the Secretary." It says, "The Secretary may prosecute or compromise a claim that has been assigned to it."

So the secretary, the same man who will not return phone calls and takes 5 years to adjudicate a case, and who will turn down a claim on such a basis as that one was, has the right and authority to tell my client and me to dismiss our third-party lawsuit in case we have one.

If your bill passes, and they tell us to do that, then we could have it reviewed by the courts. I know it sounds kind of selfish to talk about attorneys' fees, but the fact is, in the Tennessee Valley, you cannot hire a competent lawyer to handle a Federal Workmen's Comp case for a TVA employee because we know we cannot get paid.

As I said in my statement, a remedy without a sanction is not much of a remedy. The benefits provided under the Federal Workmen's Comp Act are adequate, they are good; they are better than most States' benefits. But without some proper administration—and we do not get it from Jacksonville—we may as well not have the benefits.

Thank you.

Senator HEFLIN. Mr. Hamby, we are delighted to see you, and will be delighted to hear from you.

Mr. HAMBY. Mr. Chairman, I want to thank you for this opportunity. I am Gene Hamby of Sheffield, and I am testifying on behalf of Senate bill 2296.

I am a practicing attorney and was licensed to practice law in the State of Alabama in the year 1968 and have been practicing law in Colbert County, Ala., since that date. I have handled numerous Workers' Compensation claims for Federal employees before the U.S. Department of Labor. I am very familiar with the present law, and I have written a paper analyzing the present law, which has been presented to a meeting of the Alabama Trial Lawyers' Association. Since delivering that paper, I have been inundated by attorneys all over the State of Alabama, asking me to take Office of Workers' Compensation cases. I would consider that an honor, except the reason that these attorneys are asking me to take these claims is because the attorneys are mistreated so bad, and the fees are so bad, that no one else will take them. They are not sending me the cream of the crop; they are sending me the worst thing they have.

I think it is a shame that the situation has deteriorated to this point. Charlie Rosser and I are on the executive committee of the Alabama Trial Lawyers, and, if you have not received a copy of the resolution, I wanted you to know that the executive committee and the board of governors of the Alabama Trial Lawyers have unanimously endorsed the passage of Senate bill 2296.

Based upon my years of experience as a practicing attorney representing injured Federal employees, I want to state emphatically that the present system is not working well. Justice is often being denied or it is being delayed so long that it amounts to the same thing. This is not only affecting Federal employees; it is affecting their wives and little children.

Senate bill 2296 sets out to accomplish, I think, two very important goals. The first is to provide for limited court review. Limited court review is presently prohibited under 5 U.S.C. 8128.

Now I think this is a real paradox. In America today, Congress has seen fit to allow people to make what we call SSI claims—that is supplemental security income. These are claims made by people who have not even paid into social security an adequate amount to qualify for social security disability benefits. These people, who have not even paid into the social security system in an adequate amount, have a right by statute to court review of their claims. Yet, Federal employees, who have labored sometimes decades in the service of the Federal Government, do not have the right to court review of their claims. I cannot understand the difference in treatment.

I know that probably one of the greatest obstacles we will face in this legislation is the fact that our Federal courts are crowded. But I want to state that next to criminal matters, I cannot imagine anything more serious than a person who has worked for years in Federal service, who is maimed or who has caught a disease from his Federal service, and his whole future hangs on a string. He should have a right to court review of his claim.

I have listed several reasons that I think court review is very important. One example is the Office of Workers' Compensation Programs may misinterpret the law. I can tell you with a fairly good deal of certainty that they are very anti-lawyer. Consequently, they have very few lawyers in their department and consequently, they do not have the technical knowledge to interpret statutes and administrative rulings. I have just, on behalf of an elderly black lady, had that very thing happen to me. After a delay of approximately 3 years, I finally went to Appeals Board, which is as high as you can go before you lose forever because you have no right of court review. Appeals Board held that for that whole time, the lower agencies had been applying the wrong test in her husband's death. The lower administrative agency had actually applied the test to my client's husband's death of proximate cause, which test clearly states that it is to be used when the United States is trying to prove someone cannot collect because they are intoxicated. I pointed this out very clearly at the lower level; they denied it. And I want to read to you what Appeals Board said to them:

> The test the board used in Oaks in making its determination is the one that has been stated on many occasions, to hasten disability or death is to cause it, as far as the right to compensation is concerned. This is the proper test to be used in this case.

Now, Appeals Board is telling us that that test had been clearly stated. I told the Department of Labor in a letter they were using the wrong test, that they were going to a completely different part of the code section to try to defeat my lady's claim. Now, Appeals Board sent it back in April. I have heard nothing since then, and I would suspect that there is a good chance that Annie Watkins will die before they rule on her claim for widow's benefits. Her claim has been going on since 1979, and in April, after applying the wrong test all those years, Appeals Board finally sent it down again and said, "Apply the right test," so we start over again.

Another reason is that the claims of injured and diseased fellow employees have been subjected to unbelievable delays. You have heard some cited by the other people here. I have just cited Ms. Watkins. Another one I would like to cite is the case of William Lee Gargus. Mr. Gargus was injured in 1967. His case was finally disposed of in April of 1974. He was first denied any compensation in March 1970. So you had over a 4-year gap there that that man was denied.

Senator HEFLIN. I believe that when I left to go on the bench, I gave you that case, didn't I?

Mr. ROSSER. You did, and we went through a lot of fights. [Laughter.]

Mr. HAMBY. I think it is accurate to say—and I mean this—that the Office of Federal Employees' Compensation, now called Office of Workers' Compensation Programs, has virtually been given a license to kill. They are totally free to do whatever they want to. I would suggest to you that under the present status of the law, that they can deny a claim for any reason that they want to, and it cannot be reviewed. It does not matter whether the reason is legitimate, or it is not, because they are not subject to review.

Robert talked about the fact—Mr. Potts—that he would write them letters, and they would not answer them. They like to deal direct with your client, and you do not even know that it is going on.

I had a case where my claimant won, and about 6 months later, I found out about it. I wrote the Office of Workers' Compensation and asked them to please tell me what was happening, and they would not answer my letters. I filed a lawsuit, and the judge held that I had no cause of action. Now that completely destroys, in my opinion, 5 U.S.C. 8127, which says that person has a right to an attorney.

If the Office of Workers' Compensation cannot be made to even talk to me, then how can I represent my clients under section 8127? How can I represent a client if the Office of Workers' Compensation Programs cannot even be made to send me copies of the file or talk to me?

Another problem—and again, I bring up Annie Watkins. Annie Watkins is way up in her seventies, and she has crippling arthritis. It takes her like 15 minutes to walk from the curb into my office. When her hearing came up at which they applied the wrong test, they asked Annie Watkins to come to Atlanta, Ga., for that hearing. Now, you know how far Atlanta, Ga., is from Sheffield, Ala., and I had to——

Senator HEFLIN. For the record, about 275 miles.

Mr. HAMBY. I think, about 275 miles. And I got your dear Sue Roden to call them and ask them to please do something about it, so they moved it to Birmingham, which is only 120 miles that she had to travel to get a hearing.

Senator HEFLIN. I have got a vote on, and I am going to have to go. If you will, complete, and then I want to come back and ask you a couple of questions.

Mr. HAMBY. Do you want me to proceed while you are gone?

Senator HEFLIN. Yes, go ahead.

[Staff assumed the Chair.]

Mr. HAMBY. The second goal of S. 2296 is to establish some standards for attorneys' fees so that Federal employees will be able to employ attorneys when they have a claim. I can state with certainty that Federal employees are having a difficult time in our part of the country securing legal counsel. I have received inquiries from injured employees in Tennessee and many parts of Alabama. I am representing clients from as far away as Auburn, Ala., which is well over 200 miles; also near Huntsville, Ala. I get inquiries from everywhere.

Again, I would like to consider this an honor, but I think it is primarily because I am one of the few that will take them, and the main reason I take them is that I am hoping that there will be some changes in the law. It is not economical, and it is hard on one's family, but I just cannot stand to see the Office of Workers' Compensation run over these people.

Mr. BRISKMAN. Mr. Hamby, are the provisions in the bill as set out adequate for attorneys' fees?

Mr. HAMBY. I am a little concerned about the provisions in the bill because 5 U.S.C. 8107 provides for some lump sum awards, and I am not sure that the bill adequately discusses lump sum awards and any guidelines for how an attorney's fee should be awarded on a lump sum award.

Mr. BRISKMAN. Mr. Potts.

Mr. POTTS. I think it leaves OWCP too much discretion the way this bill is presently drawn. I think, certainly, like some of the earlier witnesses today, this is a great step, and we would take this bill in a minute. But where you have this demonstrated antilawyer bias, and you give the OWCP or the Department of Labor total discretion in setting attorneys' fees, you are going to still have problems, in my opinion. But if it is subject to court review, I assume that the court could adjust this.

So I have some concerns about it, but not as many as I do about the present state of the law.

Mr. BRISKMAN. If you all would review those sections and maybe make some recommendations to the subcommittee as to appropriate language or concerns, so we could draft maybe a minimum or a maximum or floors to protect your concerns, but I still think you need a little discretion in there.

Mr. POTTS. Sure. I think so, too. I think in the past, there probably have been abuses on the attorneys' fees situation, where too much of the compensation has gone toward cost and expenses, and I think there needs to be some sort of minimal regulation in that area.

Mr. HAMBY. My biggest concern about the bill as it is drafted is because there are provisions for lump sum awards, and I do not think the bill addresses that.

I think that the reasons, primarily, that attorneys do not want to handle these claims are because of low and inconsistent attorneys' fees, long delays in processing the claims, and the possibility of having to travel long distances at great expense and time for hearings.

Now, when you take one of these cases, you had better be prepared not to see any remuneration for possibly 2 to 4 years. And you know, a lot of lawyers cannot afford to do that, particularly when the remuneration is going to be nearly nothing.

Under present circumstances, it is not unusual for an injured or diseased Federal employee to have great difficulty in finding an attorney who will take the claim, and I think this frustrates 5 U.S.C. 8127, which gives them the right to employ an attorney.

Now, the regulations on attorneys' fees are found at section 10.145 of the rules and regulations. The regulations provide that contingent contracts would not be recognized. What is a contingent contract? A contingent contract probably is made up of two elements. First of all, your pay is contingent upon being successful. I can assure you that the Office of Workers' Compensation does not object to that first part. If your claim is unsuccessful, they do not object to you not getting paid. What they object to is you getting a reasonable percentage of the award, if you are successful.

I have sent them letters before where I was not successful, saying, "There is no change, because I was not successful," and they certainly did not say, "We do not recognize contingent contracts." But you send them one after you are successful, saying, "The client agreed to pay me some small percentage," and I assure you they will tell you that they do not accept contingent contracts.

It is contingent, though. Those people cannot pay, and we do not expect them to pay if we are not successful. They are in enough financial difficulty as it is.

I want to give you an example of just what I am talking about, and it is documented in a decision which I tried, and this case is styled, "William Lee Gargus and Tennessee Valley Authority in front of the Employees' Compensation Appeals Board, Docket 74-73." I argued to Appeals Board that the fee was so grossly inadequate as to frustrate the act of Congress that allowed that man to hire an attorney. And I want to read to you what Appeals Board had to say.

> Under all the circumstances of this case, including the time devoted to actual necessary work performed and the results achieved, a fee in the amount of $1,855 is not fair and reasonable and would tend to deter attorneys from representing claimants in Workmen's Compensation cases. This was not the intent of Congress in enacting the provisions of 5 U.S.C. 8127.

But, gentlemen, we cannot go to Appeals Board every time. If we are going to have to go to Appeals Board, every time, we cannot take the cases. Appeals Board, I think, makes a pretty strong effort to be fair most of the time, but they are the very last resort under the Act.

I wholeheartedly commend Senate bill 2296 to this subcommittee. It is long past due, and it is essential to restore justice and equity to the legal system through which Federal employees pursue compensation claims.

Mr. Chairman, I am grateful for the opportunity to express my views to you and to members of your subcommittee. On behalf of the Federal employees and their families of this great Nation, I urge your support of this legislation and hope that it will be favorably considered.

Thank you.

Mr. **Briskman**. Mr. Potts, do you have any idea how many cases would be anticipated to be filed in the district court?

Mr. **Potts**. I do not have the statistics. I personally look to the social security model. I think this would be very similar to the disability scheme in the Social Security Act, and I know our office handles probably 100 social security disability cases a year. Out of those, we probably do not have over three or four that go to the district court level. There is something salutary about knowing that the district court is going to look over your shoulder. It makes agency people apply the law more fairly, more reasonably, and more consistently. And I have nothing—I know that the social security fund is in trouble—but I have nothing but praise for the situation we see in our area with the administrative law judges and the determinations that are made on social security disability cases. There is no reason that this cannot work just as well. And I think you will find a very small percentage, less than 5 percent of these cases, ever make it to the district court.

Mr. **Briskman**. Do you know how many filings there are a year under the present statute?

Mr. **Potts**. I do not. I have no access to those statistics.

Mr. **Briskman**. Mr. Hamby, do you know if there are selected jurisdictions that these types of cases would be more likely to appear upon, where it would not be a nationwide impact on the district court system, or is it pretty well throughout the country?

Mr. **Hamby**. It is my understanding, from what limited knowledge I have, that it would probably be very much in the Deep South. It is my understanding, and I do not have any detailed knowledge, but that there are more claims in the Deep South than most of the rest of the Nation, because of so many construction projects, like nuclear plants and things like that. Tennessee Valley Authority is covered by the act.

Mr. **Potts**. Well, it is obvious that in the trades and labor area, you are going to have more injuries than you have, for example, in Washington here, with the desk jobs. I think TVA has something like 15,000 to 18,000 trades and labor employees. They do their construction by force account, and that is where we see the great number of these, and of course, they are up and down the valley. I have claimants who see me from Tennessee, Mississippi, and Alabama, and I have not compared notes with people around the country, but I know people throughout the Tennessee Valley who handle labor and employee-type matters are facing this situation with the Jacksonville office.

Mr. **Briskman**. What jurisdictions does the Jacksonville office cover?

Mr. **Potts**. I believe—and I stand to be corrected on this—that they handle Alabama, Mississippi, Georgia, Florida, and Tennessee, but I am not positive about that.

Mr. **Briskman**. Any additional information you can provide to the subcommittee as to the concerns with the administration, whether Jacksonville or otherwise, would be very helpful to the subcommittee in drafting any report or making any recommendations to the administration.

Mr. **Potts**. I might suggest to the committee that if the people from Jacksonville will not come up and voluntarily testify, as I understand that they have had the opportunity to do here today, that they be subpenaed, and also, whatever records they have about statistics and time for processing claims be subpenaed, and they be compelled to disgorge this information. I think it would be shocking.

Mr. **Briskman**. Mr. Rosser, do you think that, if in fact this bill became law, it would actually discourage more appeals and actually cut down on the number of litigation at administrative law, because the law would be more set, or do you think it would increase the amount of litigation in the administrative law process?

Mr. **Rosser**. Any litigation would be an increase because we cannot have litigation now. There is no way. Hamby's case is the only case ever in the history of the world that ever got into court, really. And the only reason he got into court was the judge just felt sorry for him being in the quandary he was in, and took it, knowing that it should not be.

But there will not be that much litigation. The threat of the court going in there will assure that those people in Jacksonville do right, like Robert said; just knowing that we have the right to go into court is going to change things tremendously. If social security did not have provisions for judicial review, I fear it would be a sloppy, messy agency. But since the judicial review is there, I probably handle 50 social security disability cases a year out of my office, and I have never gone into court on 1 of them. I have appealed them to the appeals counsel, because all it takes is a letter, but I have never filed a lawsuit. I have not had to. I get fair treatment. The administrative law judges and the appeals counsel properly apply the law and treat everybody fairly, so we do not have to go into court. But would they do that if we did not have the right to go into court? I doubt it.

Let me address the adequacy of the fee provisions of S. 2296 that you mentioned a while ago. The Federal workmen's comp law, like most of the States' workmen's comp laws, have a schedule. For example, if you lose an arm, you get 312 weeks of compensation—even though you might go back to work the next day, you know, if your job happens to be one that you do not need the arm, and you can work without it, you get 312 weeks' compensation. If you lose 50 percent of the use of the arm, you get half that, which would be 156 weeks. Or, if you lose 25 percent of the use of the arm, you get a fourth of that.

All right. The way S. 2296 is drawn, the attorney's fee is fixed only as to past due benefits, not future benefits. The case I mentioned earlier where my client lost 53 percent of the use of his right arm, when they finally made him the award—which was 6 years later—they did not send him 156 weeks. They sent him 1 week and said, "We start your 156 weeks running now. Next week, you will get another one, and so on and so forth." So there was no past due benefits. If a claimant establishes a right for partial loss of a scheduled benefit, I feel that the fee should be based on the total award that he will eventually get, not just on the past due. It will not work if you use the words, "past due benefits," this way.

In most of the State workmen's comp cases, if a schedule member award is made, the judge will award an attorney's fee based on the total value of the scheduled award, not just for past due benefits. That is No. 1.

No. 2, they will continue to kick us around in Jacksonville by using that attorney's fee thing if we leave them very much discretion.

Mr. HAMBY. Can I say something else? When I tried one of these cases, the Department of Labor called me and said I could not sue them, and fortunately, the judge mandamused them. For some reason, they were very concerned about this case, and they flew the Assistant Attorney General of the United States down there from Washington to try it. And he told me in private, No. 1, he said the compensation office had very strong antilawyer bias. He even told me a story—and I cannot remember all the details—but he said that one of the former heads punished people who slipped off and went to night law school that were in that agency. That person did not want them getting law degrees. And he told me that he could tell me right then that I was not going to get a good attorney's fee for my representation. And this is the one I read you just now, where the appeals board held that the attorney's fee was so inadequate as to frustrate the act of Congress.

Mr. ROSSER. The people in Jacksonville, Senator, if you will excuse me just a minute, actually trick the lawyers. Thomas Keenham, a lawyer in Booneville, had a hearing——

Senator HEFLIN. That is Booneville, Miss.?

Mr. ROSSER [continuing]. Booneville, Miss., had a hearing for a TVA employee before a hearing representative. Keenham had planned on getting a doctor's deposition, Dr. Wood, but he could not. So he went in and had the hearing, and he told the hearing examiner, "I will try to get Dr. Wood's deposition later." Well, now, the Government's doctor was a doctor named Kennelly. All through the hearing, the hearing examiner encouraged Keenham not to get Wood's deposition by inferring that Wood had the case won. For example, this is what the hearing examiner said in the hearing, and I am reading right out of the transcript:

> It may well be that Dr. Kennelly—

That is the Government's doctor—

> submitted a report, but under the circumstances presented here, from a personal point of view, and without expressing any opinion of the office itself, but from a personal point of view, I do not feel that Dr. Kennelly's examination, if that is what anyone would call it, would give him sufficient information, based upon which to write a detailed medical report and opinion. That is just a personal feeling at this point.

All through the hearing, that hearing examiner was telling Thomas Keenham, "You have got the case won. Do not worry about getting Dr. Wood's report." So he did not. And you know what the hearing examiner did; he ruled against it. That is fraud, and I submit to you that they trick the claimants and they trick the lawyers when the lawyers get into a case. With the possibility of a court review, that would not happen.

Senator HEFLIN. Mr. Potts, let me ask you a question. You are a former professor of law and have got advanced degrees at Harvard and other places, as well as being a graduate of Alabama.

There are some administrative agencies that handle claims, disputed claims, that have judicial review provisions—social security and, as you pointed out, SSI. What is the real rationale as to why certain administrative agencies are reviewed by the courts; why are they selected? Is it because of the seriousness of the decisions, or what?

Now, you know, we have got basic administrative law. We have got a lot of things that decide it. A lot of them are not reviewed judicially, and some are. Now, in other words, what is the rationale for reviewing some, and does that rationale apply to the present type of workmen's compensation?

Mr. POTTS. I do not believe that there is a consistent rationale. I think each piece of legislation, based on its history and the cause of it, has sort of evolved separately. I think there are very few agency decisions under the Administrative Procedure Act and so forth, that are not ultimately reviewable. It is in my experience by far the exception that there is a provision written into the law that says no court shall ever review this matter. I have not had the opportunity nor the library resources to go into the legislative history of this provision. I think I am going to do that simply as a matter of curiosity. But I would suspect that there were some very strong pressures placed on Congress when it enacted this particular provision to avoid court review, with some general feeling that, "Well, if we get lawyers and courts involved, (1) it is going to increase the costs, (2) it is going to clog the courts, and (3) we can handle this administratively much better." I think that does not take into account the bureaucratic mind, when it has the ultimate authority and no one ultimately to whom it is responsible.

And I think the fact that we have court review, as we stated while you were out of the room, in the social security system, in the disability appeals situation, has shown what a salutary effect that has on the agency itself. I think we all agree, all three of the witnesses here, and I think most anyone would agree that the disability appeals procedure, using administrative law judges, is very efficient, very fair, and as a result, there are very few cases that reach the district court level through that system. And I think you will find the same thing would ultimately result in this area, because it is a very similar type situation, where you have somebody disabled, on the one hand, asking for social security disability benefits, and where you have somebody injured in the workplace. The problem is, you have got cracks. The social security law says you can only obtain disability benefits if you are unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment which has lasted or can be expected to last for 12 months.

Senator HEFLIN. That has been changed; it is now 24 months, I think. That is what is causing all this review in the disability.

Mr. POTTS. But the point is that that is a stiff standard, and one may be injured on the job and not be able to go back to his present occupation and still not qualify for that.

Senator HEFLIN. Thank you very much.

[The prepared statements and additional submissions of Mr. Potts and Mr. Hamby follow:]

STATEMENT OF

ROBERT L. POTTS

SUMMARY OF STATEMENT

I. Based on Witness's Personal Observations and Experiences In The Tennessee Valley Area for Eleven Years, S. 2296, Giving District Courts Jurisdiction To Review Compensation Appeals, and providing Vehicle for Compensation Claimants To Obtain Adequate Legal Representation, Is Urgently Needed.

II. The Noble Policies of The Federal Employees' Compensation Act, To Provide Speedy Financial Assistance To Employees Injured In The Workplace, Without Regard To Fault, Are Not Being Fulfilled, As OWCP Is Currently Administering The Act.

  A. Delays of Over Two Years In Processing Claims Have Been Commonplace.

  B. As Shown By Numerous Examples, The Act As Presently Written and Applied, Is Creating Total Havoc and Despair In The Lives of Many Formerly Productive Government Workers, Who Are Caught In A Morass of Bureaucratic Indecision, Red Tape and Delay, and During The Interim Losing Their Homes, Their Farms, and Their Automobiles, While Watching Their Children Being Raised In A Deprived State, All Without The Right or Means To Be Heard In An Impartial Forum Concerning Their Claims To Compensation Benefits.

    1. Vaughn Owen Cook, Counce, Tennessee.
    2. Jack Whitten, Laurel, Mississippi.
    3. Albert D. Williams, Killen, Alabama.
    4. Frank T. Dyer, Reagan, Tennessee.

III. S. 2296 Will Go Far Toward Alleviating The Outrageous Situation That Now Exists By (1) Giving Injured Federal Workers A Forum For Fair, Impartial and Speedy Consideration of Their Complaints, (2) Encouraging OWCP Employees To Do A Better and More Efficient Job of Processing Claims and (3) Making Legal Representation Available To Injured Federal Employees.

TEXT OF STATEMENT

My name is Robert L. Potts, and I am a practicing attorney in Florence, Alabama, and past President of Young Lawyers Section of the Alabama State Bar. I appreciate being given the opportunity to testify before you today on this important piece of legislation.

A considerable part of my law practice involves representing individuals and local labor unions in employment-related matters. One of the largest employers of trades and labor employees in our area of the country is the Tennessee Valley Authority. As a consequence, in the approximately eleven years I have been practicing law in the Tennessee Valley, I have observed and interviewed literally hundreds of federal employees who have been injured in the course of their federal employment. Based on my personal observations and experiences, I can state without reservation that this legislation giving district courts jurisdiction to review compensation appeals, and providing a vehicle for compensation claimants to obtain adequate legal representation, is urgently needed.

The underlying purpose and policy of workmen's compensation, both state and federal, is and should be to provide employees injured in the workplace, and their dependents, a speedy source of funds with which to pay medical bills and to meet immediate (and, in some cases, long-term) financial needs without regard to fault in connection with the cause of the work-related accident.

The idea of workmen's compensation evolved in Germany, in the 1880's, as an outgrowth of the industrial revolution. Around

1900, England accepted the idea, and from that time on, legislators in this country pushed the concept. Most states adopted workmen's compensation acts between 1902 and 1919. The federal act was first adopted in 1916. See S. Horovitz, Injury and Death Under Workmen's Compensation Laws 6-7 (1944); 39 Stat. 742 (Sept. 7, 1916).

Measured against its noble policies, the Federal Employees' Compensation Act, as administered by the Office of Workers' Compensation Program of the Department of Labor (OWCP), is doing a very poor job of fulfilling its purposes, at least in our area of the country.

Delays of over two years in processing claims have in the past been commonplace. Although the situation has now improved somewhat, the delay is still in many cases unconscionable. Coupled with the delay and compounding it, is the inability of claimants to obtain legal representation to assist them in establishing their claims to the satisfaction of OWCP. This results from the obvious anti-lawyer bias of OWCP, and the current state of the law where any small attorney's fee which may ultimately be approved by OWCP, must be collected directly from the claimant, usually long after he has been paid his past due benefits and spent them. Add to this the fact that there is now no court review of the decisions and delay in the administrative process, and the result is total havoc and despair in the lives of many formerly productive government workers, caught in a morass of bureaucratic indecision, red tape and delay, and during the interim, losing their homes, their farms and their automobiles, while watching their children being raised in a deprived state, all without the right or means to be heard in an impartial forum concerning their claims to compensation benefits. I have obtained permission from several individuals to use their experiences as examples in my testimony.

1. Vaughn Owen Cook, Counce, Tennessee -

> Mr. Cook, a pipefitter, was injured on April 14, 1972, while working at the Browns Ferry Nuclear Plant, in Limestone County, Alabama, when he was hit on the head by a piece of angle iron. Although injured, and under the care of several doctors, he continued to work until no longer able to do so in February 1976, and shortly after this time he applied to OWCP for compensation. When he had received no compensation by June 15, 1976, he asked an attorney to assist him. Letters were written to OWCP, and finally, on September 30, 1976, a letter was received denying compensation. Additional evidence was supplied OWCP in December 1976. Nothing was heard at all in response to this information for many months, so in October, 1977, the attorney again contacted OWCP, beseeching the office for a decision. Finally, a letter was received from OWCP on November 2, 1977, indicating partial acceptance of the claim, but requesting further information, and an additional medical evaluation. This was finally arranged by OWCP on January 30, 1978, and a report promptly forwarded to OWCP. Finally, on May 4, 1978, the OWCP approved the claim, over two years after it was filed. When no money had been received by Mr. Cook by September 15, 1978, another letter was written to OWCP inquiring as to benefits. Finally, on September 29, 1978, OWCP wrote to Cook's attorney again, requesting more information on work activity. After another letter from Mr. Cook's attorney to OWCP on October 27, 1978, sometime before February 6, 1979, OWCP, without notifying his attorney, mailed Mr. Cook a check for past due benefits of $41,335.00, and he was awarded a monthly benefit check of $1258.00. After Mr. Cook received his money, he refused to deposit any of it in a trust account to preserve it pending OWCP approval of an attorney's fee. The attorney's time records showed he had spent approximately 30 hours on the claim, over a period of almost three years.

Finally, on October 3, 1979, after voluminous correspondence, OWCP approved a fee for the attorney of $1635.00. Mr. Cook now, due to cost of living increases, receives a monthly check of $1759.00, as a result of his attorney's persistent work in documenting his claim. To date, Mr. Cook has received well in excess of $100,000.00 as a direct result of his attorney's efforts, yet his attorney was paid less than two percent (2%) of this amount, after waiting for his fee for more than three years. After this experience, the attorneys in the office which represented Mr. Cook, made the decision not to handle any more OWCP claims, except in the most exceptional of circumstances. Numerous OWCP cases are turned away monthly by this firm, since the likelihood of adequate compensation in such cases is virtually nil under the present law and OWCP attitude toward attorneys' fees. As a result, numerous individuals who have little education and cannot properly assimilate evidence in support of their claims, are left without deserved compensation benefits, and with no avenue of relief except to write their senators or congressmen, begging for assistance.

2. Jack Whitten, Laurel, Mississippi -

Jack Whitten, a machinist, while working for the Tennessee Valley Authority, was injured in March of 1973, and was off work 10 weeks. During this period, he did not receive any compensation, and finally had to return to work, even though his injury had not healed. After he returned to work, he did receive his compensation, but had to again stop work because of the injury. Compensation was again a problem, and because of this, Mr. Whitten was forced to sell his farm and cattle. He went back to work again, but was unable to continue, and was reinjured in December 1975, and was required to have surgery on July 12, 1976. His last day at work was June 5, 1976, and he filed a compensation claim as of that date. As more fully appears from the Affidavit of Sallie Sims, attached hereto as Exhibit 1, Mr. Whitten, in February 1978, finally received his compensation, after much correspondence, delay and hassle. He and his family were in dire financial straits, and lost almost everything they owned. In desperation, after discussing the matter with OWCP, Mr. Whitten sought retraining as an insurance agent, and began to earn self-employment income. Because of an ambiguous form OWCP mailed him, he did not realize he could not receive monthly compensation and also have self-employment income. On November 23, 1981, he received a letter from OWCP requesting he immediately write OWCP a check for $74,898.57 for an alleged overpayment! See Exhibit 2 attached hereto. This, of course, he did not have. He filed a request with OWCP to be excused from this under Section 8129 of the Act, due to the fact he was not at fault in creating the overpayment, and that it would be against equity and good conscience to force him to repay the same. He was given an OWCP hearing on that issue on July 30, 1982, and a decision has not been rendered. If the decision is adverse, due to the current state of the statute, he has no judicial remedy. Further, he has learned that OWCP has turned the matter over to the U. S. Attorney for possible criminal prosecution. Also, a Department of Labor investigator contacted an insurance company for whom he wrote policies, and shortly thereafter, it cancelled his contract, although he was one of the best performers with the company. His leg still hurts every day from his injury, yet he is now faced with going to jail, in addition to having lost his property, due to OWCP actions, not subject to court review.

3. Albert D. Williams, Killen, Alabama -

Albert D. Williams is an iron worker who was injured on several occasions while working for the Tennessee Valley Authority. Following an injury on July 2, 1976, he could no longer work, and filed a claim for compensation. Finally, on July 5, 1977, he was mailed a compensation check for $50.40, OWCP finding he was entitled to benefits only from August 20, 1976, to August 22, 1976. The OWCP district office decision denying additional benefits was dated April 5, 1978. Mr. Williams requested a hearing, which was finally granted on April 26, 1979. The hearing representative of OWCP finally issued a one and one-half-page decision affirming the district office on January 2, 1980, basing his finding on a report from a physician known for his bias toward employers and against employees in compensation cases, and rejecting the report of another physician favorable to claimant. An appeal was filed with the Employees Compensation Appeals Board, which issued a decision on July 16, 1980, affirming the hearing representative's decision against Mr. Williams. Thus, with no judicial remedy, Mr. Williams has been denied, probably forever, compensation benefits to which he is entitled. He still cannot work, but "gets by" on Social Security payments.

4. Frank T. Dyer, Reagan, Tennessee -

Frank Dyer, this minute, is about to have his home and farm foreclosed upon, because he was injured while working for the Tennessee Valley Authority as a Construction Inspector at Pickwick Dam, Tennessee, on March 23, 1982, has been out of work since that date, has received no benefits, and cannot meet his house payments. Following his termination by TVA, because of his medical restrictions resulting from the injury, he filed a U. S. Merit Systems Protection Board Appeal (see Exhibit 3 attached), filed for workers compensation (see Exhibit 4 attached), and filed for TVA medical retirement (see Exhibit 5 attached). He was forced to dismiss his MSPB appeal, because his medical condition had deteriorated to the point he could not do his required duties at TVA (see Exhibits 6 and 7 attached). He learned on September 14, 1982, that TVA had not mailed his paperwork to OWCP (see Exhibit 8 attached), and has been advised by a TVA staff attorney a decision has not yet been made on his medical retirement request (see Exhibit 9 attached).

Thus, Frank Dyer sits in limbo on his little farm in Reagan, Tennessee, watching his life savings being depleted, his home and farm being foreclosed upon, his medical insurance being cancelled, and wondering why he must be treated in such a manner after the many years of faithful service he has rendered to the United States. Without this legislation, he is virtually without remedy.

The legislation before you in S. 2296, will go far toward alleviating the outrageous situation that now exists with respect to Federal Employees' Compensation claims.

First, working people, by and large, have a great deal of confidence in our federal court system. They believe, and I think rightly so, that in this forum, they can receive a fair, impartial and speedy consideration of their complaints. For good reason, they do not have the same confidence in OWCP administrative procedures. The mere fact that injured workers know that they ultimately can have their claims reviewed in a federal court, should in and of itself reduce the multitude of correspondence and calls each of you and each congressman must receive from your constituents about compensation matters.

Second, the mere fact that federal court review is available for these claims, should have a salutary effect on employees of OWCP. Not many federal judges that I know of will countenance delay of two to three years for the processing of relatively simple claims. It is not too much to expect of OWCP that it render decisions promptly on compensation claims. There is no excuse for not answering letters or responding to simple inquiries about claims for up to twelve months at a time. The Internal Revenue Service, the Social Security Administration and many other agencies with much larger caseloads, are able, with the use of effective management techniques, computers, and word processing equipment, to respond reasonably quickly and efficiently to claims and inquiries. The human suffering and hardship that is being caused by OWCP foot-dragging cannot be estimated in monetary terms. Something simply must be done about the situation, and this bill is an excellent start.

Third, the provision in S. 2296, providing for withholding of attorneys' fees from past due benefits, although in my opinion still allowing Department of Labor too much discretion in the setting of attorneys' fees, is a great improvement over the current situation, and will, in my opinion, if passed, make legal representation again available to compensation claimants.

A cynic might argue that attorneys would create more delay. I submit to you that the experience of the Administrative Law Judges who make disability determinations under the Social Security Act, suggests that the reverse is true. Competent private attorneys, knowing they probably will not be paid for their services if they do not win a claim, discourage non-meritorious or fraudulent claims. In those claims they do accept, they are able to marshall evidence and enter stipulations in such a manner as frequently to shorten the hearings. To put it simply, the private attorney, in a small or solo practice, who might be inclined to accept these types of cases, will be broken quickly from accepting frivilous claims, by the substantial expenditure of time and money on a non-meritorious case or two, for which, after much hard work, he will never be paid. In other words, the private bar tends to police the cases that are taken through the system, when their fees are to a certain extent contingent on a favorable result.

Thus, for all of the above reasons, I urge you to report S. 2296 favorably, and support its passage by the Senate.

Thank you for allowing me to appear before you today.

STATE OF ALABAMA)
LAUDERDALE COUNTY)

AFFIDAVIT OF SALLIE H. SIMS

Before me, the undersigned authority, in and for the state and county aforesaid, personally appeared Sallie H. Sims, who being known to me, and who being by me first duly sworn, deposes and says as follows:

My name is Sallie H. Sims, and I reside at 436 West Lee Street, Florence, Alabama. I am employed as secretary to the Business Manager at the International Brotherhood of Electrical Workers Local No. 558, 3325 Jackson Highway, Sheffield, Alabama, a position which I have held for thirteen years. In my capacity as such secretary, I have frequently been called upon to assist workers in filing and processing claims for workers compensation. In this capacity, I offered to assist Jack K. Whitten in connection with his claim for Federal Employees Compensation as a result of injuries he received while employed as a machinist with the Tennessee Valley Authority. I offered to become involved in this matter after learning he had been off work for many months, had lost a farm he owned in Limestone County, Alabama, and had not yet received any compensation for his injuries. I assisted Mr. Whitten in writing letters to various public officials, seeking to get his compensation started, or either getting his restrictions lifted so that he could return to work at TVA. An example of the types of letters that I assisted Mr. Whitten in preparing, is the attached letter, marked as Exhibit A, dated February 16, 1977, to Mr. Herbert A. Doyle, Director of the

Exhibit 1

OWCP, U. S. Department of Labor, and Exhibit B, a letter mailed to Ms. Helen S. Foster of the OWCP, U. S. Department of Labor, which clearly stated he wanted to either be returned to work, or be awarded a scheduled award, or be rehabilitated. Finally, in February 1978, Mr. Whitten was determined to be eligible for a compensation award, and received a check dated February 27, 1978, for back compensation, along with a form on the back of a letter dated February 27, 1978, a copy of which I am attaching as Exhibit C hereto. My writing appears on the form prior to the signature, dated March 3, 1978. Simultaneously with the forms I was completing for Mr. Whitten, the compensation clerk at TVA, Mrs. Riley, was completing and mailing to Mr. Whitten for signature, forms CA-8, which were forwarded to the U. S. Department of Labor, Employment Standards Administration, by TVA.

Before Mr. Whitten received the money for overdue compensation, I made several telephone calls for him to the Office of Workers Compensation Programs in Jacksonville, Florida. On one specific occasion, I remember talking to an examiner in the Jacksonville, Florida office of the Office of Workers Compensation, whom I believe was Mrs. Lou Fones, and arranged for her to call Mr. Whitten at his home the next day, at Cherry Street in Florence, Alabama. I went to the Whitten home and was present with Mr. and Mrs. Whitten when the special examiner from Jacksonville telephoned. I first talked to her and tried to clarify the different injuries that Mr. Whitten was suffering from, one to his finger and another to his leg. Then, I put Mr. Whitten on the telephone to the special examiner, and recall, specifically, his discussing with her his desire to obtain retraining for work in real estate and insurance, and asking her whether or not compensation would pay for his retraining, and also telling her that he intended to begin work in this regard as soon as possible, since he had a wife and two children to support, and no source of income. This telephone call was either in 1976 or early 1977. Mr. Whitten has in his file a telephone number, 1-904-791-3523, which, I believe, is the number for the 400 West Bay Street office of the Office of Workers Compensation Programs in Jacksonville, Florida, which was the number I called when discussing this matter with the special examiner. I talked on another occasion to a Mr. Dancy, and also may have talked with Mrs. Helen Foster, a supervisory claims examiner.

I know that Jack Whitten had a great deal of difficulty in getting compensation to which he sincerely believed he was entitled, and further know that he at no time had any intent to receive anything he was not entitled to.

Although I do not recall being consulted by Mr. Whitten prior to his filling out the form contained on the back of letter CA-1032, a copy of which is attached hereto as Exhibit D, I do recall him coming to me after he was contacted by a special investigator from the U. S. Department of Labor, and I must admit that I was confused by the instructions on reporting employment and pay contained on the front of the letter, even though I have had a great deal of experience in insurance and compensation matters. Jack Whitten told me, and I can understand why he would feel this way, upon review of the form, that after reading paragraph 4 of the form, he did not feel that he was obligated in any manner to report income from a business which he owned, which was an insurance agency, nor income or profits from investments or real estate, especially since he had informed OWCP of his intent to go to work in another field, and had applied for a scheduled award, during which period Mr. Whitten had been advised he could work. Further, since he was self-employed as an insurance agent, he did not feel that paragraph A of the form called for him to list names and addresses of employers. Therefore, he stated "none."

I also understand from review of Exhibit E attached hereto that the Labor Department revised its letter CA-1032 in March of 1980, and this form was received and filled out by Mr. Whitten in March of 1981, without reading the revised language which was certainly much clearer than before. Again, I did not assist him in filling out this form, but understand he attempted to fill it out himself after he received it.

In summary, I do not believe that Jack Whitten had any intent ever to receive compensation payments to which he was not entitled and I believe that he was without fault in receiving the overpayment, based on the ambiguous form attached as Exhibit C, his prior conversations with the Office of Workers Compensation, in my presence, wherein he disclosed that he intended to seek employment in the real estate and insurance fields, and the letter he received from Congressman Flippo's office, indicating he could work during a Schedule A award period, a copy of which is attached as Exhibit F.

I further can explain why Mr. Whitten uses the 525 Collier Street, Florence, Alabama address rather than his address in Mississippi. We originally began using a 518 North Cherry Street, Florence, Alabama address when I started assisting Mr. Whitten in connection with his compensation problems, and then when he moved from the Cherry Street address, his wife resided at the Collier Street address, with her mother, while he was attempting to become established in Mississippi as a self-employed insurance man, and I advised Mr. Whitten to continue to use the Collier Street address, even after his wife moved with him to Mississippi, because it had taken months to get the address changed from Cherry Street to Collier Street, and had caused great confusion within the office of the Employment Standards Administration, Office of Workers Compensation Programs, and with others with which we corresponded about these claims. It was always felt that the move to Mississippi would probably be a temporary one, because at that time, he wanted to go back to work at TVA as a machinist, and therefore, I advised that the Collier Street address be used as a permanent one. Further, at this time, no compensation was being paid, and it was simply a place to which correspondence could be directed.

Sallie H. Sims
Sallie H. Sims

Subscribed and sworn to before me, this 29th day of July, 1982.

Notary Public
My Commission Expires February 4, 1984

February 16, 1977

Mr. Herbert A. Doyle
Director OWCP
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room 53524
Washington, D. C. 20211

Dear Mr. Doyle:

On a recent date, I telephoned your office to appeal your assistance in getting my Compensation Claim with the Tennessee Valley Authority paid. As of this date I still have not had a compensation check and am advised verbally by the Jacksonville, Florida Employees Compensation Office that it is due to the fact that my claim is in such a mess. I have also learned, in that same conversation, that I have three claims, when, in fact, I have only two separate claims. I wish to make you aware of the following information, in the hope that you not only may assist me with my claim, but that you may be able to assist others with these same problems. Also, by way of this letter, I am appealing to Mr. Aubrey Wagner, Director of TVA, and several other people, for their assistance and attention to myself and the many others like me who are being discriminated against by the Tennessee Valley Authority and most of those people, like myself, do not know how or what action to take to get any results and we must rely completely on the advice of the white collar workers of TVA, or, on what some other person has done under these circumstances.

In March of 1973, I was walking through the shop where I was working as a Shop Machinist and I stepped into some loose gravel on the floor which caused me to slide and fall. During the process of my fall, my legs "split" apart and all of the muscles in the calf of my left leg and knee were pulled. I went immediately to Medical and the doctor working in the medical office there advised me that I had only damaged the blood veins in my leg and that I should stay off it and it would improve. He would not give me permission to go to an outside specialist. I was off work ten weeks, in a great deal of pain and frequently visited the doctor in Medical at TVA requesting to go to an outside doctor and he persisted in his opinion that I could not be granted the privilege under Compensation to see an outside doctor, and, I, believing that I would damage my Compensation claim and also haveing faith in him did not go. During this ten week period, I did not receive any Compensation pay, and upon the advice of the TVA Doctor and due to the fact that I have a family and was broke, I returned to work. After I had been at work three weeks, I received the ten weeks of pay and I worked with an intense burning pain in my leg and knee and after a period of time, I discovered a knot forming behind me knee and when I showed this to the TVA doctor, he gave me permission to visit an outside specialist and made an appointment for me to see Dr. John Shuttleworth of Florence, Alabama in December, 1973. Dr. Shuttleworth advised me that every muscle in my knee and leg had been torn and pulled from my knee cap and in the calf of my leg and the fluid had drained from my knee cap causing the cyst to form and he hospitalized me at once and operated on my left leg and knee. He also told me that had I had attention from him sooner, the damage might have been less extensive. I was off work until September, 1974. During this time I was off I finally did get my compensation started, however, the only way I could get my checks was to make a long distance telephone call every six weeks and within a few days I would get the check. Also during this time I was forced to sell my farm and the cattle, etc.

Exhibit A

which I had purchased since I could not meet my obligations on the amount of money I was receiving from Workman's Compensation.

You will note that I, (copies attached), began to attempt to report back to work several months prior to September of 1974, however, I was rejected each time since I now had restrictions placed on me by TVA doctors. I call particular attention to the fact that my restrictions included primarily "No Climbing". I have already stated to you that I am a shop machinist and I have never climbed in my work. I stand, walk, and occasionally stoop. The only reason I was finally permitted to return to work was due to the fact that Mr. J. A. Pascur, Superintendent of the Browns Ferry Nuclear Plant job sent me a letter of termination for not having reported back to work after my Workman's Comp accident. When he did that, I, in turn, forwarded to him and to all people named as carbon copies on his letter, photo copies of my rejection slips by the doctors. You will not from the other letter from Mr. Pascur, attached, that I was immediately given permission by him to report back to the job. I worked there until August, 1975, (during which time I was denied the right to accept an Annual Maintenance position at Browns Ferry due to my injury restrictions by TVA doctors), however, after a great deal of hassle, begging, and pushing of my 20 point Veteran status, I was allowed to transfer with restrictions to the Chemical Plant in Muscle Shoals. I would like you to pay particular attention to my restrictions on all copies which are enclosed. You will note they vary on each one. I am advised that only one doctor can remove these restrictions from me, (he being a TVA doctor, of course), since he placed them on me. However, I am amazed that if the other doctors cannot remove them they can certainly change them, and within two week periods, too.

In December, 1975, I caught my small finger of my left hand in a conveyor belt, (copy of the accident report attached), which I reported to Medical and TVA doctors treated and a cyst grew in it, too, and after quite a period of time, some metal was located in the cyst and removed, however, it continued to grow and once again after a great deal of coercion on my part, I was permitted to have an appointment with Dr. Lloyd Johnson, Florence, Alabama, who advised me that he would like to watch the finger for a month or so. During this period, (February, 1976), I was transferred to Colbert Steam Plant where I worked seven days a week, ten hours a day and I only missed work two days during that time,neither of which days were related to my finger nor my leg. I would like to point out at this time that this should be sufficient evidence to any person, or firm, that I an not and have not at any time been interested in staying off on compensation. On June 5, 1976, I visited Dr. Johnson and he advised me that he needed to proceed to remove the cyst from my finger. He was to be out of town for two or three weeks and upon his return he would proceed with the surgery. I advised the secretary in Muscle Shoals, who handles the compensation claims, (one Fern Riley), and she completed my papers, and I, trusting that they were correct, since I am not an office employee, signed them. She advised me that everything was in proper order, and I, not desiring to have the same problem which I had previously experienced personally called the Jacksonville, Florida office and a Mr. Palmer advised me that everything was in order due to the fact that my claims, (both of them), were completely legitimate with no question.

Consequently, Dr. Johnson proceeded with my surgery on July 12. During the time which I was hospitalized, the compensation office in Florida called my home. They left no message other than that they needed to talk to me. Upon my return home, I called their office numerous times and had no response from them. When I could determine nothing, I called Mrs. Riley and she did not know, so, I called Mr. Kerr's office in Chattanooga to see if he could help and he wrote the letter, (attached), and sent a copy to me. Today, I still do not know why they called my home.

During the latter part of August, when I still had heard nothing, I appealed to Congressman Bob Jones for his help. Copies of his correspondence are attached, showing his attempt to help. About this same time, I started getting job referrals from my Union Business Manager to return to work and I have been continuously refused the right to work due to my physical limitations and TVA personnel manager, Bob McDaniel, has asked my Union representative not to refer me out to work again at TVA jobs. He made this request after he had refused me work nine times.

Under the circumstances, and due to the fact that I am being sued by the hospital for my confinement with my finger and I am in default in my house and automobile payments and since I seem to be fighting a brick wall, I applied for work as a Shop Machinist at a local Ford plant in Muscle Shoals, Alabama. I was hired, and they requested that I take a physical and when I reported for it, Dr. Caden, a TVA doctor who is moonlighting for the Ford Motor Company turned me down for employment due to back problems. I have never in my life had back problems and I contested his diagnosis. Mr. Henry Grigsby and Mr. Jack Castile, both employees of Ford, Mr. Grigsby as Personnel Manager and Mr. Castile as UAW representative, agreed to hire me and Dr. Caden left the Ford plant. They had all of my papers signed, I had a shift assignment and was getting ready to leave the plant and Dr. Caden called Mr. Grigsby on the phone and advised him that I had two or three compensation claims against TVA. Naturally, they collected all of my forms back from me and I was not hired. I salvaged one of the cards they had issued me and I attach it as proof. This type action on the part of TVA personnel and doctors is in direct violation of my civil rights, plus the fact that it is discrimination in the vilest form. As you can readily see, not only are they keeping me from work at TVA but they intend to keep me from work, period. On a later date, I confronted Dr. Caden with this action and asked him why, if I can't come back to work for TVA, did he concoct a lie about my back to the Ford people. He advised me that it was his intent to keep them from hiring me in that manner and since it did not work, that he then left the plant and called back with the workman's compensation reason, rather, than change his statement in front of me. He has since that time admitted this to the Personnel Manager at Ford.

I have attached photocopies of all work records which I have in my possession from TVA and a resume of my employment with TVA. As you will readily note, I have worked with TVA since 1954 and they have gone to the time and expense to put me through a complete Apprentice training program as a Machinist. I came to work at TVA as a Veteran, and I am able and available for work, as evidenced by my records and I am being discriminated against for my misfortune in falling on the job, and, catching my finger in a conveyor on the job.

The Doctor has totally released my finger, forever. He has stated that I must learn to live with the pain in my knee and leg, and I have. He has stated that at some later date, unless there should be a change in the size of the cyst, there is the possibility that I may have to have more surgery for the removal of the cyst, however, he does not anticipate any such thing within ten years or so.

My requests are simple; I should like to be paid my compensation due me for my finger; I should like to be afforded the opportunity to work in this area, (Muscle Shoals), and I should like my work restrictions removed without further harassment from doctors, and, since TVA has caused me not to be able to get employment elsewhere and if they refuse to remove my restrictions and let me work, then I should like to be placed on Total and Permanent Disability because in their eyes I am done for anyway. This past week, I discussed with Dr. Huffstetler what the Doctor has reported to me, and is sending to TVA and to Jacksonville, Florida. He advised me that under no circumstances would he remove my restrictions but instead would file for me to be eligibel for rehabilitation training. I am already trained as a Machinist - why change my trade? It would seem to me that that is a waste of Taxpayers, or, rather government money.

Mrs. Riley advised me that she would file for partial disability on my leg. I have no claim for my leg unless surgery becomes necessary. The only reason I went to medical so much with it in the first place was due to the fact that I was told to let them know any time it hurt, or, I wrenched it in any wav, therefore, I was only trying to do whatever they felt was right.

Won't you please, or, some of the gentlemen to whom I am sending copies of this letter help me? Surely someone can and will be willing to assist. I know of no other course I can take except to humbly beg your assistance.

Thanking you in advance for any courtesy and cooperation shown to me in this matter.

Very truly yours,

Jack K. Whitten

May 7, 1977

Ms. Helen S. Foster
Supervisory Claims Examiner
Office of Workers' Compensation Programs
400 West Bay Street
Box 35049
Jacksonville, Florida 32202

Ref: Claim A6-84414
Claim A6-129766

Dear Ms. Foster:

Reference is made to your letter dated April 29, 1977, answering my request I made to your office dated last October 31, 1976,(six months ago) after I contacted President Carter requesting him to intervene for me--your office finally answered.

In paragraph 1, you stated that I was incorrect in assuming that the Federal Employee Compensation Act requires that I be paid or returned to work because of my service-connected disability. Dr. Joseph Hufstedler, Chief, Medical Center, TVA, Muscle Shoals, Alabama, told me that because my injury was service-connected and that because TVA Personnel would not let me work because of the restrictions placed upon me due to the service-connected injury to my leg, they were compelled to either pay me a scheduled award, find work for me, or rehabilitate me, or all three of these. They have done none of these. I have attempted eleven times to return to work but due to above stated injury, Personnel has refused to hire me. Even my attending physician has agreed to lift the restrictions (see attached letter), still TVA Personnel will not agree to let me work with the restrictions. In addition to Dr. Johnson trying to get the restrictions lifted, on December 1 1976, a month after October 28, 1976 (more than a month), TVA Personnel called my Local, International Association of Machinists, told my Business Agent, Lon E. Harbin, not to bother to send me back to TVA on a referral because of the restrictions placed upon me by TVAdoctors. They would not let me return to work with such restrictions and that they were tired of doing the paper work required only to have me turned down.

Also, a TVA doctor--Dr. Caden--who is moonlighting at Ford Motor, a local company, turned me down from that company because of the same restrictions. I have tried other factors and have run into a blank wall when they check my medical records with TVA. If this does not affect my capacity to earn wages as you stated in your first paragraph, then would you kindly tell me what is?

In your third paragraph your letter shows that I did have a service-connected injury to my left little finger while in the performance of duty. You state that it was for the injury for my finger I was awarded compensation from 6-5-76 to 10-25-76. Please tell me why you paid me on three different checks (6 months later). The first check being paid on my leg claim number on laborer/s scale (I have never worked as a laborer). After much correspondence and hassleing the second check was paid on my leg claim number at 1973 scale

Exhibit B

when I first sustained the injury. Then in desperation, I finally contacted our President, you say you are paying me for the finger and sending me a check for the same period on the pay scale $314 per week which I was making when I had the surgery. If you are trying to do right by my claim, why are you not consistent with the settlements with these claims and financially ruining me and my family. You state that I have no entitlement to additional compensation for total disability caused by this injury. If you check your records, you will find that upon October 25, 1976, when Dr. Johnson released me to go back to work from my finger surgery, I was not turned down because of my finger, instead I was refused work because of a three year old restriction placed on my leg. Since October 25, 1976 (please check your records) all of my CA 8's have contained my leg claim number. Prior to that time from June 5 until I was released October 25, my CA 8's contained my finger claim number. I am trying to be fair and honest but I am becoming lost in the shuffle and mixup of these claims.

Your special attention to paragraph 4 is requested: You state that you received no information concerning this injury between 12-4-74 and 10-21-76. That was because I was working with heavy restrictions and was instructed by TVA doctors and Dr. Shuttleworth, attending physician, to report to Medical Center anytime my leg became swollen or bothered me in any way. This I did many times. I now find that each time I reported to Medical, they assigned me a new claim number. This made it appear that I have had more claims and injuries than I have had. In my seventeen years of work with TVA, I had only two injuries.

You also wrote that you had received a report from my physician stating that in general I was doing fairly well. I discussed this with him and showed him this letter. He insists that at no time had he indicated I was well by any means. He agreed to lift restrictions in order to get by TVA doctors (he said they were very stubborn in their opinion not to lift the restrictions so that I might return to work). You also stated that in a subsequent report this physician stated I had permanent disability in the left leg but had not associated it with the injury of 3-21-73, nor had he furnished a description of such disability. (attached report by Dr. Johnson, Jr.). He clearly states in the first paragraph that I had fallen at Brown;s Ferry injuring my left leg which developed a cyst which led to surgery. This cyst has now reoccurred. He also describes the damaged leg and suggested that I may have as much as 25 percent permanent damage. He is making a further study and getting other opinions from Dr. Plott, a Neurologist, and who Dr. Shuttleworth referred me to in 1973 and he reported that I had muscle fibres pulled and scar tissue and damaged nerves in the calf of my left leg, and he referred me to Dr. Roy for possible surgery (this is all on your reports because you paid the bill for this surgery in 1973). Dr. Roy at that time suggested that I had some permanent damage and would have to learn to live with the paid it caused, but that if it got worse, he had some surgery to offer. At that time I went back to work with heavy restrictions trying to live with the pain.

It would appear that you are of the opinion that my injury is connected with the surgery Ihad while serving in the United States Marine Corps. My physician assures me that there is no connection whatsoever. Also, let me assure you that when I was hired by TVA they were made aware of my disability compensation and that I worked 17 1/2 years without it bothering me. Certainly, it was on my record and has no connection with the service-connected injury to my left leg. I had the same surgery on my right knee and it does not bother me at all.

In your next paragraph you statethere is no evidence to show that I am totally disabled by reasons of my 3-21-73 injury. I would like to point out to you with as far as me being totally disabled that is the opinion of the TVA doctors and Personnel Office and the personnel officers in private industry of this area. If being denied the right to work because of an injury related disability with the employment of the company, TVA, where I was injured while working does not make me totalled disabled, then what does?

I am sending copy of your letters dated April 29, 1977, and a copy of my answer plus copy of all reference letters including doctors' reports to President Carter, all senators, my attorney with the DAV for their study of this matter. I believe that I have beendiscriminated against and that the facts have been distorted by reading into or out of the doctors' reports and I do not believe that your office is qualified to do this to the Orthopedic Surgeon's report.

In summary, I feel that I am entitled to an award not less than 25 percent of of my total earnings which I would have been able to make at the rate I was making when I had my last surgery had I been allowed to work for the remaining time. This should be made to me as an award for for a 60-months period for rehabilitation purposeses to replace by wage capacity that I have lost due to the mishandling of my claims. In previous lettersI showed you where I had lost my farm and home I had purchased while working at Browns Ferry and payment had to be made on this. It was five and one-half months before I received one penny of compensation from my leg surgery. I am going to request and insist that the President, himself, look into this deplorable situation. I also have a copy of a petition of about three hundred names of others who have had similar dealings in trying to receive compensation which they are justly due.

TVA still no doubt considers me as being totally disabled as they send to me every two weeks form CA 8 which is a claim for coninuting compensation on account of disability. It shows A6-84414 which is the claim number for my leg. I have copies of all claims which I have signed, copies of all receipts and reports which I am attaching to this letter for proof.

I know that you will give this your honest consideration in settling this claim and a new doctor's report will be forthcoming and a copy of this will be sent to the President of the United States.

Sincerely,

Jack K. Whitten

cc: President Jimmy Carter
Mr. Aubrey Wagner, TVA
Mr. Lynn Seeber, TVA
Mr. Daniel D. Adams, DAV
Ronnie Flippo, Congressman
James Allen, Senator
Honorable John Sparkman, Senator
Mr. Olan R. Long, Representative
Mr. Herbert A. Doyle, DOL
Mr. Mike Wallace CBS
Governor George Wallace
Ms. Lois Ulrickson, TVA
Dr. Robert L. Craig, TVA

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Office of Federal Employees' Compensation
Jacksonville, Florida 32202
400 W. Bay Street. Box 35049

February 27, 1978

OFEC File No. A6-84414
Date of Injury: 3/21/73

Mr. Jack Kermit Whitten
537 Collier St.,
% Margie Russell
Florence, Alabama, 35630

The compensation currently being paid to you is computed on the basis of total disability. If, at some time in the future, your condition improves to the point where you are able to perform some type of work, it will be necessary to redetermine the amount of your entitlement. Please complete the questionnaire on the back of this letter and return one copy to us now. Then, read the information in the following paragraphs, keep a copy of this letter, and refer to it when your injury-related condition improves.

The doctor will notify us when you are no longer totally disabled. If you are able to resume your regular work at that time your compensation will cease. If you are unable to resume your regular work because of partial disability resulting from your injury, your compensation will be computed on the loss of wage-earning capacity caused by the partial disability that remains. In this event we will write you again before your compensation is reduced.

If you are working at the time your entitlement to compensation is redetermined, your actual pay may be accepted as your wage-earning capacity if it appears fair and reasonable. If you are not then working, we must determine your wage-earning capacity on the basis of what you should be able to do and earn.

It will be in your best interest to return to work as soon as you are able to perform light duty. Refusal to seek, accept, or continue work suitable to your disabled condition is lawful grounds for the suspension of compensation. When you are able to do any work, you should report first to the establishment where you last worked. If they do not have a suitable job, you should register, without delay, at the nearest office of the State Employment Service for work suitable to your disabled condition. The State furnishes employment service free of charge. You may obtain their address from a telephone directory. After registering, report there at least once a month, or more if necessary, until you get a job. We suggest you also check with that office as to your eligibility for unemployment insurance benefits. Such benefits will not affect your entitlement to compensation from this office.

It will be up to you to find work suitable to your condition when you are no longer totally disabled. You should notify us when you go to work. Your efforts to find work must be reported to us whenever you are requested to do so. You should therefore keep an accurate record of when and where you applied for work and why you were not hired.

Sincerely,

Helen S. Foster

Helen S. Foster
Supervisory Claims Examiner

Include your address, ZIP code, and file number on all correspondence

Ltr. CA-1653
Rev. April 1973

Exhibit C

WRITE YOUR ANSWERS TO THE FOLLOWING QUESTIONS IN THE BLANK SPACES. IF YOU NEED MORE SPACE USE A SEPARATE SHEET OF PAPER, NUMBERING THE ANSWERS TO CORRESPOND WITH THE QUESTION NUMBERS.

1. What is your Social Security Account Number? 423-42-4426
2. What is your date of birth (month - day - year)? 7-8-30
3. What was your trade, occupation, or profession before you started working for the Government? Machinist
4. State the nature and extent of your education, including trade and professional schools:

High School - 1½ yrs College ..
4 yrs apprentice program as Machinist

5. Under the following headings list all employment for 5 years immediately before your Government service. (If you were working for yourself, write "self-employed." Tell what you did. Give an estimate of your weekly earnings on the basis of what it would have cost you to have hired someone else to do the work.)

Name and address of employer	Occupation	Period of employment	Approximate weekly pay
Atlantic American Life Ins		58 to 59	75.00 wk
Southern Airways	- Ticket agent	59 to 60	80. wk
Flavorich Dairies	Route Sales	55 to 56	75.00 wk
Self Employed	- Service Station	- 54 to 57	75.00 w.

I HEREBY CERTIFY THAT THE INFORMATION GIVEN BY ME ON AND IN CONNECTION WITH THIS QUESTIONNAIRE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

3-3-78
(Date)

Jack K. Whitten
(Signature)

★ U.S. GOVERNMENT PRINTING OFFICE: 1974-733-313/3460 3-1

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STAND DS ADMINISTRATION
Office of Workers' Compensation Programs

MAR 24 1980

File No:
Date of Injury:

0A60C84414

JACK K WHITTEN
(MARGIE RUSSELL
537 COLLIER ST
FLORENCE AL 35630

The information requested on the reverse of this form is required in connection with the compensation you are receiving from this office. Please read the three parts of this form before you return it to our office.

If your address has changed from that shown above, please furnish your current address.

The completed form must be returned within 30 days, otherwise, your compensation payments may be suspended.

INSTRUCTIONS ON REPORTING EMPLOYMENT AND PAY

1. You must report all employment during the past 12 months (or since your last employment and pay was reported to our office if less than 12 months ago).
2. You must account for the entire time, including periods of self-employment or unemployment.
3. You must report as your "rate of pay" (per week) your pay before deductions. You should also include in your "rate of pay" the value of housing, board, laundry, or any other advantages received. If you did not work for others but were self-employed (such as farming, operating a store, etc.), you must report as pay what it would have cost you to have hired someone to do the same work.
4. Do not report as pay any other income from a business which you fully or partially own, nor profits or income from investments or real estate. Do not report overtime pay.

Sincerely,

Supervisory Claims Examiner

Ltr. CA-1032
Rev. June 1975

Include your address, ZIP code, and file number on all correspondence

Exhibit D

COMPLETE ALL THREE PARTS

NOTICE: Fraudulent claims are punishable by a fine of not more than $2,000 or by imprisonment for not more than one year or both.

A. Names and Addresses of Employers	Dates Employed From To	Rate of Pay (per week)	Kind of Work

B. DEPENDENTS: If you have one or more dependents place an "X" in the box opposite the statement(s) below to identify each of your dependents:

1. Wife or husband.
   - ☐ who is a member of your household.
   - ☐ who is not a member of your household but who is receiving regular contributions from you toward his or her support.
   - ☐ to whom you have been ordered by a Court to contribute support.
2. Unmarried child.
   - ☐ who is living with you and is under 18 years of age.
   - ☐ who is living with you but is over age 18 and is incapable of self-support by reason of mental or physical disability.
   - ☐ who is not living with you but receives regular contributions toward support and who is under 18 years of age.
   - ☐ who is not living with you but receives regular contributions toward support and who is over 18 but is incapable of self-support by reason of mental or physical disability.
   - ☐ between age 18 and 23 who is pursuing a full-time course of study at a school, college, university or training institution. The child's name and date of birth are ____________ ____.
3. Parent.
   - ☐ who is wholly dependent upon and supported by you.
4. No dependents.
   - ☐ I no longer claim additional compensation on account of dependents. Date dependency ceased was ______________; reason dependency ceased was:______________________.

C. If you are a veteran with service in the Armed Forces of the United States, please state below whether you are now receiving, or have a claim pending, for benefits from the Veterans Administration on account of such service. If so, furnish your file number; the address of the VA office handling your claim; and the nature of the disability for which the claim or award was made:

I HEREBY CERTIFY THAT THE INFORMATION GIVEN BY ME ON AND IN CONNECTION WITH THIS QUESTIONNAIRE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

____________________ (Date)

____________________ (Signature)

____________________ (Address)

GPO 914-931
U.S. G.P.O. 1978-720-369/4657

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Office of Workers' Compensation Programs

MAR 24 1980

File No:
Date of Injury:

0A60C84414

JACK K WHITTEN
I MARGIE RUSSELL
537 COLLIER ST
FLORENCE AL 35630

The information requested on the reverse of this form is required in connection with the compensation you are receiving from this office. Please read the three parts of this form before you return it to our office.

If your address has changed from that shown above, please furnish your current address.

The completed form must be returned within 30 days, otherwise, your compensation payments may be suspended.

INSTRUCTIONS ON REPORTING EMPLOYMENT AND PAY

1. You must report all employment during the past 12 months (or since your last employment and pay was reported to our office if less than 12 months ago).
2. You must account for the entire time, including periods of self-employment or unemployment.
3. You must report as your "rate of pay" (per week) your pay before deductions. You should also include in your "rate of pay" the value of housing, board, laundry, or any other advantages received. If you did not work for others but were self-employed (such as farming, operating a store, etc.), you must report as pay what it would have cost you to have hired someone to do the same work.
4. Do not report as pay any other income from a business which you fully or partially own, nor profits or income from investments or real estate. Do not report overtime pay.

Sincerely,

Supervisory Claims Examiner

Include your address, ZIP code, and file number on all correspondence

Ltr. CA-1032
Rev. June 1975

COMPLETE ALL THREE PARTS

NOTICE: Fraudulent claims are punishable by a fine of not more than $2,000 or by imprisonment for not more than one year or both.

A. Names and Addresses of Employers	Dates Employed From To	Rate of Pay (per week)	Kind of Work
NONE			

B. DEPENDENTS: If you have one or more dependents place an "X" in the box opposite the statement(s) below to identify each of your dependents:

1. Wife or husband. ☒ who is a member of your household.
   - ☐ who is not a member of your household but who is receiving regular contributions from you toward his or her support.
   - ☐ to whom you have been ordered by a Court to contribute support.
2. Unmarried child. ☐ who is living with you and is under 18 years of age.
   - ☐ who is living with you but is over age 18 and is incapable of self-support by reason of mental or physical disability.
   - ☐ who is not living with you but receives regular contributions toward support and who is under 18 years of age.
   - ☐ who is not living with you but receives regular contributions toward support and who is over 18 but is incapable of self-support by reason of mental or physical disability.
   - ☒ between age 18 and 23 who is pursuing a full-time course of study at a school, college, university or training institution. The child's name and date of birth are Jack "Rocky" K. Whitten Jr. 5-20-80 Tina L. Whitten 6-28-[illegible]
3. Parent. ☐ who is wholly dependent upon and supported by you.
4. No dependents. ☐ I no longer claim additional compensation on account of dependents. Date dependency ceased was ________; reason dependency ceased was: ________.

C. If you are a veteran with service in the Armed Forces of the United States, please state below whether you are now receiving, or have a claim pending, for benefits from the Veterans Administration on account of such service. If so, furnish your file number; the address of the VA office handling your claim; and the nature of the disability for which the claim or award was made:

File 17666617 Broken leg and torn Cartledge in Knees 20% disability $65.00 mo.
VA office Florence Al.

I HEREBY CERTIFY THAT THE INFORMATION GIVEN BY ME ON AND IN CONNECTION WITH THIS QUESTIONNAIRE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

(Date)	(Signature)	(Address)

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs

Mailed 3/9/81

File No. 0460084414
Date of Injury:
SSAN:

[illegible]
[illegible]
[illegible]
[illegible] 15433

MAR 9 1981

The information requested is required in connection with your claim for benefits under the Federal Employees' Compensation Act. All questions must be answered completely and fully.

The completed form must be returned within 30 days, otherwise your compensation benefits may be suspended.

If your address has changed from that shown above, show your new address in Part D on the reverse of this form.

INSTRUCTIONS ON REPORTING EMPLOYMENT AND PAY/EARNINGS

1. You must report any and all employment and pay/earnings during the past 12 months (or since your last employment and pay/earnings was reported to this office).

2. You must account for the entire time, to include all periods of full or part time employment (including self-employment) and unemployment.

3. You must report as your weekly "rate of pay" your gross pay before deductions. You must report commissions or piecework. You must also report separately your employer's value of housing, meals, food allowance, clothing and any other advantages received. Do not include overtime pay.

4. If you did not work for others but were self-employed (such as farming, operating a store or business, etc.), you must report such employment and show as "rate of pay" what it would have cost you to have hired someone else to do the same work. You must also report the number of hours worked each week and describe the work performed.

Sincerely,

Exhibit E

Ltr. CA-1032
Rev. March 1980

NOTICE: A false or evasive answer to any question may be grounds for suspending your compensation benefits; or, if fraudulent, may be punishable by a fine of not more than $10,000, or imprisonment of not more than five years, or both (under appropriate U.S. Criminal Codes). All statements are subject to investigation for verification.

PART A. EMPLOYMENT: Report all employment (including self-employment) and pay/earnings and account for all periods of unemployment. Attach an additional sheet if more space is needed.

Names and Addresses of Employers   Dates Employed   Rate of Pay   Kind of Work

T.V.A Will not let me return to Work because of restriction placed on my leg and because I have a operation pending in the future to remove the syst that is returning on my leg

PART B. DEPENDENTS: If you have one or more dependents, place an "X" on the line opposite the statements below to identify each dependent.

1. Wife or Husband X who is a member of your household.
__who is not a member of your household but who is receiving regular contributions from you toward support.
__to whom you have been ordered by a Court to contribute support.

2. Unmarried Child __who is living with you and is under the age of 18.
__who is living with you but is over age 18 and is incapable of self-support by reason of mental or physical disability.
__who is not living with you but receives regular contributions from you toward support and who is under 18 years of age.
2 between age 18 and 23 who is pursuing a full-time course of study at a school, college, university, or training institution. The child's name and date of birth are Jack Whitten JR. MAY 20 1960 And Tina Lynn Whitten June 28, 1961

3. Parent __who is wholly dependent upon and supported by you.

4. No Dependents __I no longer claim additional compensation on account of dependents. Date dependency ceased was __________.
Reason dependency ceased was __________.

PART C. Are you a veteran with service in the Armed Forces of the United States?
☑ YES ☐ NO

If yes, are you now receiving or do you have a claim pending for benefits from the Veterans Administration on account of such service? ☑ YES ☐ NO If yes, furnish your VA claim number, the address of the VA office handling your claim, and describe the nature of the disability for which the claim or award was made.

423-42-4426 V. A. Hsp
215 Perry Hill Road
Montgomery, Al 36109

PART D. CERTIFICATION: I certify that all the statements made in response to questions on this form are true, complete, and correct to the best of my knowledge and belief. Any information left blank on the form has been done intentionally and indicates an answer by me that I have no information to provide which is required by the question.

Jack E. Whitten
Signature in ink

525 Collier Ave
Address

3-9-81
Date

Florence Ala 35630
City State ZIP

U.S. Department of Labor

[illegible]
[illegible]
[illegible] Employees' Compensation [illegible]
1371 Peachtree Street N.E.
Atlanta, GA 30309

October 3, 1980

File Number: A6-84414

Honorable Ronnie G. Flippo
House of Representatives
Washington, D.C. 20515

Dear Representative Flippo:

This is in reply to your September 19, 1980 inquiry concerning the compensation case of your constituent, Mr. Jack K. Whitten.

Please refer to our February 22, 1978, November 9, 1977 and May 5, 1977 letters for background information on this case.

Since February 22, 1978 Mr. Whitten has been receiving compensation for temporary total disability on our periodic roll. His gross compensation rate each four weeks is $1302.00.

According to Section 8107 of the Federal Employees' Compensation Act, if there is a permanent disability involving the loss of use of a member of the body the employee is entitled to basic compensation for the disability in the form of a Schedule Award. Before such an award, it is necessary for the medical evidence to show that the employee had reached maximum medical improvement from the effects of the injury. A Schedule Award is payable in addition to compensation for temporary total disability. During the period of a Schedule Award Mr. Whitten may work. Earnings from employment would not decrease his award payments. Also, the law does not prohibit the concurrent payment of a Schedule Award and benefits from the Office of Personnel Management.

On August 11, 1980 we requested Mr. Whitten's attending physician, Dr. Lloyd Johnson, Jr., to evaluate Mr. Whitten concerning the extent and degree of disability remaining as a result of the employment injury and give a recommended percentage impairment of the affected member. The report from Dr. Johnson was not adequate for us to determine Mr. Whitten's entitlement to a Schedule Award.

Accordingly, arrangements have been made for Mr. Whitten to be evaluated by Dr. Robert A. Sparks a board-certified orthopedic specialist to determine Mr. Whitten's entitlement to a Schedule Award.

During the intervening period Mr. Whitten will continue to receive compensation for temporary total disability.

We hope this answers your inquiry. If you have further questions, please do not hesitate to contact us.

Sincerely,

Robert D. Carr

ROBERT D. CARR
Director, District 17

Exhibit F

Enclosures

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Federal Employees' Compensation
1371 Peachtree Street, N.E. (404)-881-7845
Atlanta, GA 30367

November 23, 1981

File Number: A6-84414

Mr. Jack K. Whitten
525 Collier Street
Florence, Alabama 35630

Dear Mr. Whitten:

We have reviewed the investigation conducted by the U.S. Department of Labor, Office of Inspector General and determined that there is substantial evidence that you were actively involved in the management of an insurance agency since 1976.

During the period you failed to make the required report concerning your earnings. The claim form CA-8 signed and dated June 21, 1976 claiming compensation for June 5, 1976 through June 21, 1976, eleven (11) forms CA-4 signed and dated by you claiming compensation continuously from June 5, 1976 through December 31, 1976, and subsequent forms CA-1032; all reflect no employment or earnings.

The pertinent section of the FECA concerning the forfeiture of your right to compensation reads:

The Secretary of Labor may require a partially disabled employee to report his earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies. The employee shall include in the affidavit or report the value of housing, board, lodging, and other advantages which are part of his earnings in employment or self-employment and which can be estimated in money. An employee who fails to make an affidavit or report when required, forfeits his right to compensation with respect to any period for which the affidavit or report was required. Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under section 8129 of this title, unless recovery is waived under that section 5 U.S.C. 8106(b)(1).

In your case the waiver provisions of FECA 8129 are not applicable because you are at fault in the matter of the overpayment. You failed to furnish information concerning your work activities and earnings, information which you knew or should have known to be material.

Accordingly, your right to compensation since 1976 and future compensation has been forfeited until such time as you report your work activities and earnings.

Your last compensation check was dated November 4, 1981. Prior notice of the forfeiture of your compensation was not given because such action would have only increased the overpayment in your case.

Exhibit 2

November 23, 1981

The period of forfeiture and resulting overpayment is for the period June 5, 1976 through November 4, 1981, totalling $74,898.57.

Forward to this office a check in the amount of $74,898.57. The check should be made out to the U.S. Department of Labor, Office of Workers' Compensation Programs, and it should show your file number given above. If you are unable to refund the entire overpayment immediately, please contact this office so that appropriate arrangements for recovery (such as installment payments) can be made.

We would like to advise you that the OWCP has the authority to turn the matter of the overpayment to the General Accounting Office, if necessary.

The amount of $74,898.57 represents only the amount of compensation paid for the period June 5, 1976 through November 4, 1981 and does not include approved medical expenses. You continue to be entitled to medical authorization for the accepted employment related condition.

Should you make the required affidavit or report of your employment and pay/earnings since June 5, 1976, we will collect the forfeited compensation, which had already been paid to you, from future compensation payments to which you may be entitled. The future compensation payments to which you may be entitled could be compensation for temporary total disability or compensation representing a wage earning capacity, whichever the factual and medical evidence may indicate.

Before we can resolve the issues pending in your case, we require additional information from you:

(1) Please report all employment (including self-employment) you have engaged in for the entire period from June 5, 1976 to present.

(2) Give a complete description of the duties performed and the job title(s).

(3) State the number of hours worked per week.

(4) Exclusive dates of employment in each position (if more than one).

(5) Weekly rate of pay exclusive of overtime. This includes the value of any board, lodging or other advantages received in addition to or in lieu of wages. Show all changes in rate of pay and the date of each change.

(6) Copies of Federal income tax returns (both individual and business) for year 1976 to present.

This represents a formal decision with regard to the forfeiture of your right to compensation and the matter of the overpayment. If you disagree with the decision you may follow the courses of action outlined on the enclosed form A-226. The action detailed or remedy sought in this letter is administrative in nature. Your response to this letter will not relieve you from possible prosecution for any violation of criminal law.

Sincerely,

ROBERT D. CARR
Director, District 17

Enclosure

UNITED STATES MERIT SYSTEMS PROTECTION BOARD

APPEAL

AGENCY USE ONLY

INSTRUCTIONS: The purpose of this form is to help you provide valuable information to the U.S. Merit Systems Protection Board ("The Board") when you file an appeal. You are not required to use this form, and you are not limited to answering the questions on the form if you feel there is other information you wish to provide. However, if you do not use the form, your appeal documents must comply with the Board's regulations. Your agency's personnel office will provide you with a copy of these regulations upon request and the Board advises you to review them.

All appellants who elect to use this form should complete Parts I through III. Only those who are appealing Reductions-in-Force (RIF) actions are required to complete Part IV. ALL APPELLANTS should also sign and date the form in the space provided at the end of Page 4 indicating approval of the contents of the entire form.

In filing out this form, wherever the space provided is insufficient you may add additional pages. If you do so, please put your name and Social Security Number at the top of the page, and indicate by number which question you are answering.

WHERE TO FILE—You or your representative are required to file one original and three copies of this form, together with its attachments with the Board's field office identified in the decision notice provided by the Agency. Filing must be made either by personal delivery during normal business hours to the appropriate Board field office or by mail addressed to that office. The Board recommends but does not require that you use certified mail.

PRIVACY ACT STATEMENT

This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection Board on appeal are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

PART I. APPELLANT IDENTIFICATION

1. NAME *(Last, first, middle)*
Dyer, Frank Thomas

2. SOCIAL SECURITY NUMBER
329 28 8437

3. PRESENT ADDRESS *(Number and street, city, state, and ZIP code)*
Route 1, Box 48-C-1
Reagan, TN 38368

4. HOME PHONE *(Include area code)*
(901) 968-8634

5. OFFICE PHONE *(Include area code)*
None

PART II. APPEALED ACTION

6. BRIEFLY DESCRIBE *AGENCY ACTION* YOU WISH TO APPEAL AND ATTACH ANY RELEVANT DOCUMENTS

I wish to appeal from the notice of decision terminating me dated May 17, 1982, a copy of which is attached hereto as Exhibit 1, which incorporates reasons contained in a notice of proposed termination dated March 15, 1982, which is attached hereto as Exhibit 2.

7. NAME AND ADDRESS OF ACTING AGENCY *(Including Bureau, or other Division as well as street address, city, state, and ZIP code)*
Tennessee Valley Authority
Pickwick Landing Project - Main Lock Const.
P. O. Box 2000
Pickwick Dam, TN 38365

8. APPELLANT'S POSITION TITLE AT TIME OF ACTION
Construction Inspector

9. GRADE AT TIME OF ACTION
SE-4

10. SALARY AT TIME OF ACTION
$20,460.00 per yr
$ PER

11. ARE YOU A VETERAN OR ENTITLED TO THE EMPLOYMENT RIGHTS OF A VETERAN?
☐ NO ☒ YES

12. TYPE OF APPOINTMENT
☐ Temporary ☐ Applicant
☒ Permanent ☐ Term

13. TYPE OF SERVICE
☐ Competitive
☐ Excepted

14. LENGTH OF GOVERNMENT SERVICE
Approx. 10 yrs.

15. LENGTH OF SERVICE WITH ACTING AGENCY
Approx. 10 yrs.

16. ARE YOU RETIRED?
☒ NO ☐ YES

16A. IF YES, DATE OF RETIREMENT *(Month, day, year)*
N/A

17. WERE YOU SERVING A PROBATIONARY OR TRIAL PERIOD AT TIME ACTION WAS TAKEN BY THE AGENCY?
☒ NO ☐ YES

18. DATE WRITTEN PROPOSED ACTION NOTICE RECEIVED *(Month, day, year) (Attach copy)*
March 15, 1982 (See Ex. 1)

19. DATE FINAL DECISION NOTICE RECEIVED *(Month, day, year)*
May 17, 1982 (See Ex.2)

20. EFFECTIVE DATE OF ACTION *(Month, day, year)*
May 21, 1982

Exhibit 3

21. WHY DO YOU THINK THE AGENCY WAS WRONG IN TAKING THIS ACTION? *(Explain briefly)*

The Agency has discriminatorily applied a penalty to me under the guise of a termination for failure to meet the requirements of my position. Further, I am being discharged because I am handicapped and because of my age, and this violates federal law, regulations and executive orders, as well as TVA policy.

22. WHAT ACTION WOULD YOU LIKE THE BOARD TO TAKE ON THIS CASE?

Reinstate me to my permanent position with TVA in a job that is consistent with the medical restrictions placed upon me by my own physician and by TVA physicians, and award me backpay for the time that I have missed from work due to TVA's action in this matter. Also, I request attorney's fees if I prevail in my appeal.

23. HAVE YOU, OR ANYONE ON YOUR BEHALF, FILED A FORMAL GRIEVANCE OR COMPLAINT, INCLUDING AN UNFAIR LABOR PRACTICE CHARGE, WITH YOUR AGENCY OR ANY OTHER AGENCY CONCERNING THIS MATTER?

☒ NO ☐ YES *(Attach copy)*

I filed grievance on termination proposed on March 15, but have dismissed it, electing to appeal to Merit Systems Protection Board.

IF YES, DATE FILED *(Month, day, year)* N/A	23B. PLACE FILED *(Agency and location)* N/A	23C. HAS DECISION BEEN ISSUED? ☐ NO N/A ☐ YES
23D. IF YES, DATE ISSUED *(Month, day, year)* N/A	23E. NAME OF ISSUING OFFICIAL N/A	23F. TITLE OF ISSUING OFFICIAL N/A

24. IF YOU BELIEVE YOU WERE DISCRIMINATED AGAINST BY THE AGENCY BECAUSE OF EITHER YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, MARITAL STATUS, POLITICAL AFFILIATION, HANDICAPPING CONDITION, OR AGE, INDICATE SO AND EXPLAIN WHY YOU BELIEVE IT TO BE TRUE. YOU MUST INDICATE, BY EXAMPLES, HOW YOU WERE DISCRIMINATED AGAINST.

I believe I was discriminated against by TVA because of my job-related handicapped condition, in that work which I was able to do, both in the office and outside the lab, were taken away from me and I was reassigned to do lab work, the lifting requirements of which are inconsistent with my health condition. I also believe that I have been discriminated against because of my age, in that one Michael Philben was retained in a similar position to mine while I was terminated due to my age and infirmed condition; whereas, he was kept in a similar position. Also, one Brent Burt was kept on the job when I could have done his job, and he is younger than me with less TVA seniority.

25. HAVE YOU FILED A DISCRIMINATION COMPLAINT WITH YOUR AGENCY OR ANY OTHER AGENCY?

☒ NO ☐ YES *(Attach copy)*

25A. IF YES, DATE FILED *(Month, day, year)* N/A	25B. PLACE FILED *(Agency and location)* N/A	25C. HAS THERE BEEN A DECISION? ☐ NO N/A ☐ YES

PART III. HEARING

26. YOU HAVE A RIGHT TO A HEARING ON THIS APPEAL. IF YOU DO NOT WANT A HEARING, THE BOARD WILL MAKE ITS DECISION ON THE BASIS OF THE DOCUMENTS YOU AND THE AGENCY SUBMIT. DO YOU WANT A HEARING?
☐ NO ☒ YES
IF YOU CHOOSE TO HAVE A HEARING, THE BOARD WILL NOTIFY YOU WHEN AND WHERE IT IS TO BE HELD.

27. YOU HAVE THE RIGHT TO DESIGNATE SOMEONE TO REPRESENT YOU ON THIS APPEAL IF HE/SHE AGREES TO DO SO. THIS PERSON DOES NOT HAVE TO BE AN ATTORNEY. THE AGENCY HAS A RIGHT TO CHALLENGE YOUR CHOICE OF A REPRESENTATIVE IF THERE IS A CONFLICT OF INTEREST OR POSITION. YOU MAY CHANGE YOUR DESIGNATION OF A REPRESENTATIVE AT A LATER DATE, IF YOU SO DESIRE, BUT MUST NOTIFY THE BOARD PROMPTLY OF ANY CHANGE.

27A. "I HEREBY DESIGNATE Robert L. Potts TO SERVE AS MY REPRESENTATIVE DURING THE COURSE OF THIS APPEAL. I UNDERSTAND THAT MY REPRESENTATIVE IS AUTHORIZED TO ACT ON MY BEHALF."

27B. YOUR SIGNATURE Frank T Dyer	27C. DATE 5/26/82	27D. REPRESENTATIVE'S SIGNATURE *(if any)*	27E. DATE 5/26/82
27F. REPRESENTATIVE'S ADDRESS P. O. Box 1760 Florence, AL 35630		27G. REPRESENTATIVE'S EMPLOYER POTTS, YOUNG & BLASINGAME Attorneys at Law	

28. YOU MAY BE PERMITTED TO CALL WITNESSES AT A HEARING UPON THE APPROVAL OF THE PRESIDING OFFICIAL. IF YOU INTEND TO DO SO, PROVIDE THEIR NAMES AND A BRIEF STATEMENT OF THEIR RELATIONSHIP TO THE CASE. YOU WILL BE PERMITTED TO REQUEST OTHER WITNESSES LATER IF YOU DO NOT LIST THEM NOW.

A. NAME	B. RELATIONSHIP TO CASE
MICHAEL PHILBEN BRENT BURT	Co-employee retained by TVA. Co-employee retained by TVA.
GORDON B. McIVER	Construction engineer and supervisor who gave notice of decision to terminate.
CHARLES R. SMITH	Supervisor, Materials Engineering Unit - Gave notice of proposed termination.

PART IV. REDUCTION-IN-FORCE (RIF)

INSTRUCTIONS: FILL OUT THIS PART ONLY IF YOU ARE APPEALING FROM A REDUCTION-IN-FORCE (RIF). YOUR AGENCY'S PERSONNEL OFFICE CAN FURNISH YOU MOST OF THE INFORMATION REQUESTED BELOW.

29. TENURE OF SUB-GROUP	30. SERVICE COMPUTATION DATE	31. HAS YOUR AGENCY OFFERED YOU ANOTHER POSITION RATHER THAN SEPARATING YOU? ☐ NO ☐ YES
32. TITLE OF OFFERED POSITION	33. GRADE OF POSITION OFFERED	34. SALARY OF POSITION OFFERED $ PER
35. LOCATION OF OFFERED POSITION	36. DID YOU ACCEPT THIS POSITION? ☐ NO ☐ YES	

37. EXPLAIN WHY YOU BELIEVE YOU SHOULD NOT HAVE BEEN AFFECTED BY THE REDUCTION-IN-FORCE. *(Explanations could include: You were placed in the wrong tenure subgroup; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you can "bump" a person in a lower tenure subgroup; or any other reasons. Please provide as much information as possible regarding each reason.)*

(Continue on the next page)

37 *(Continued from Page 3.)*

ATTENTION—THIS APPEAL MUST BE SIGNED

I CERTIFY that all of the statements made in this Appeal are true, complete, and correct to the best of my knowledge and belief.	SIGNATURE OF APPELLANT Frank T Dyer	DATE SIGNED 6-4-82

© U.S. GOVERNMENT PRINTING OFFICE : 1981 O - 341-573 (846/)

TVA 64 (OS-9-68)

UNITED STATES GOVERNMENT

Memorandum

TENNESSEE VALLEY AUTHORITY

TO : Frank T. Dyer, SS #329-28-9437, Construction Inspector, SE-4, Pickwick Landing Project - Main Lock CONST
FROM : Gordon V. McIver, Construction Engineer, Pickwick Landing Project - Main Lock CONST
DATE : May 17, 1982

SUBJECT: NOTICE OF DECISION

On March 15, 1982, you were handed a Notice of Proposed Termination because of your inability to meet the requirements of your position. You responded orally to me on numerous occasions between that date and March 26, 1982. In addition, I received a memorandum from you dated March 26, 1982, in which you addressed the Notice of Proposed Termination. I have carefully considered the file in this case, including your oral and written response, and have decided to terminate your employment for the reasons stated in the Notice of Proposed Termination referred to above. The effective date of your termination will be May 21, 1982.

You may appeal this decision within TVA, under the grievance adjustment procedure. Such an appeal must be directed to me at the Pickwick Landing Project - Main Lock, within forty-one (41) calendar days after the date you receive this notice.

As a veteran preference employee, you have the right to appeal my decision to the Merit Systems Protection Board, Atlanta Regional Office, 1776 Peachtree Street, N.W., North Wing, Third Floor, Atlanta, Georgia 30309.

Enclosed is a copy of the Merit Systems Protection Board's regulation concerning such appeals and a copy of the Board's appeal form. An appeal to the Board must be filed not later than twenty (20) calendar days after the termination of your employment. See sections 1201.22, 1201.23, 1201.24, 1201.26, and 1201.31 of subpart B, part 1201 of the enclosed Board's regulation for explanation on how to file, the computation of time limits, required contents of the petition of appeal, required number of copies, and the right to representation.

Exhibit 1

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

If you appeal, you must elect one of the above procedures. You cannot appeal under both.

Gordon V. McIver
Gordon V. McIver

GVM:JW
cc: D. L. Best, E7A3 C-K
J. C. Giddy, Yellow Creek CONST
H. D. Beadle, Pickwick CONST
TVAEA, 908 BB-K
PMU, 210 MIB-K
C. R. Smith, Pickwick CONST

I received this notice on 5-17-82
Date

Frank T Dyer
Employee's Signature

Witness: D. Latsell Matthews Date: 5-17-82

TVA 64 (OS-9-69)

UNITED STATES GOVERNMENT

Memorandum TENNESSEE VALLEY AUTHORITY

TO : Frank T. Dyer, Construction Inspector, SE-4, Pickwick Landing Project - Main Lock CONST, SS# 329-28-8437

FROM : Charles R. Smith, Supervisor, Materials Engineering Unit, Pickwick Landing Project - Main Lock CONST

DATE : March 15, 1982

SUBJECT: NOTICE OF PROPOSED TERMINATION

This is to notify you that I am proposing your employment be terminated not earlier than 30 full calendar days after the date you receive this notice. The reason for my proposal is your inability to meet the requirements of your position.

Specifically, on February 11, 1982, TVA's Medical Office at the Yellow Creek Nuclear Plant Construction project reevaluated your medical condition. You were conditionally approved for work with restrictions to "avoid lifting or similar exertion in excess of 75 pounds at any time; 50 pounds occasionally; and 25 pounds frequently." Although by assigning you work outside the Materials lab, we have been able to provide you work under these restrictions, the reduction of construction inspectors, grade SE-4, from three employees to two because of lack of work (specifically reduced concrete placement) for the Pickwick Project will require both remaining inspectors to work in the materials lab. Concrete cylinders, air pots for testing concrete, rock samples, and other items which you would be required to lift in the lab cannot be handled within your medical restrictions.

Efforts to find you another position in the Division of Construction where you could perform with your present restrictions have not been successful.. Our efforts to find such a position will continue during your notice period. In addition, the Vacant Position Announcement procedure allows you to apply for any announced positions.

Because there is no work available within your medical restrictions I find your termination would promote the efficiency of the service.

During the period covered by this notice, work will be available to you and you will be paid for all hours worked.

You may reply to the reason for your proposed termination either orally or in writing or both orally and in writing. Additionally you may submit affidavits or other support for your answer. Any reply you wish to make must be made to Gordon V. McIver, Construction Engineer, Pickwick Landing Project - Main Lock, within fifteen (15) full calendar days from the date you receive this notice. Your reply, if any, will be fully considered before a decision is rendered.

Exhibit 2

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Frank T. Dyer
March 15, 1982

NOTICE OF PROPOSED TERMINATION

You will be authorized a maximum of four (4) hours official duty time to examine the written material on which I based my proposal, to prepare a written reply, to make an oral reply, and/or to obtain affidavits in your behalf. You must make arrangements with me before you use any official duty time for this purpose.

The written material on which I based my proposal is available in my office for your review.

If you have any questions about the above time limits or otherwise, please call my office at extension 241.

Charles R. Smith
Charles R. Smith

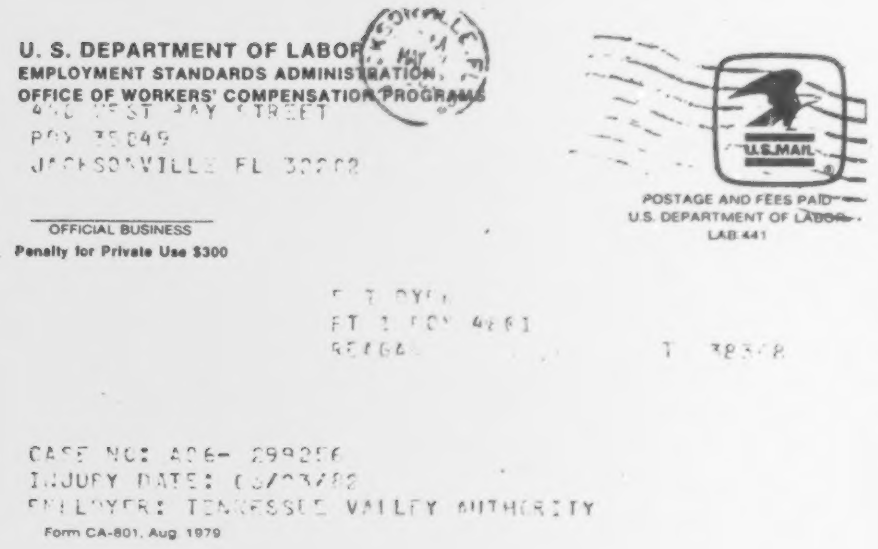
CRS:JW
cc: D. L. Best, E7A3 C-K
J. C. Giddy, Yellow Creek PERS
H. D. Beadle, Pickwick CONST
TVAEA, 908 BB-K
G. V. McIver, Pickwick CONST
PMU, 210 MIB-K

I received this notice on 3-15-82 (Date). Frank T. Dyer (Signed)

I personally handed the attached notice of proposed termination to the employee to whom it is addressed on:

3-15-82 (Date) Charles R. Smith (Signature) Supv. Mat'ls. Egr. Unit (Title)

Bobby D. Williams
Witness



U. S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION,
OFFICE OF WORKERS' COMPENSATION PROGRAMS
400 WEST BAY STREET
BOX 35049
JACKSONVILLE FL 32202

OFFICIAL BUSINESS
Penalty for Private Use $300

POSTAGE AND FEES PAID
U.S. DEPARTMENT OF LABOR
LAB 441

E T DYER
RT 1 BOX 4881
REAGAN TN 38368

CASE NO: A06- 299256
INJURY DATE: 05/03/82
EMPLOYER: TENNESSEE VALLEY AUTHORITY
Form CA-801, Aug 1979

Exhibit 4

A report ~~of~~ your injury has been received by OWCP. You have been assigned the Claim Number which appears on the face of this card. This number must be included in any correspondence, including physician and pharmacy bills, forwarded to OWCP.

Under the provisions of the Federal Employees' Compensation Act, an employee may be required to prosecute an action for damages in his/her own name when an injury occurs under circumstances which indicate that there is a legal liability on a party other than the United States for damages. Thus if you feel that the injury was caused by a party other than the United States, or intend to bring action against any party on account of the injury, please notify OWCP immediately.

If your name or address is incorrect or if you have received two claim numbers for the same injury please notify OWCP as soon as possible.

Office of Workers' Compensation Programs (OWCP)

June 7, 1982

Mr. John P. Warwick, Supervisor
Benefits Section
Tennessee Valley Authority
  Retirement System
410 Millers Building
Knoxville, TN 37902

Re: Medical Retirement of Frank Thomas Dyer,
Route 1, Box 48-C-1, Reagan, TN 38368
Telephone: 901-968-8634
SS No. 329-28-8437

Dear Mr. Warwick:

Enclosed are all of the forms you sent to me to fill out for medical retirement. You will note I have elected regular retirement and I wish to continue all benefits to which I am entitled, and to have the premiums therefor deducted from my retirement amount.

If I need to supply any further information whatsoever concerning this matter, please contact me immediately. I am in dire need of continuing these benefits and receiving whatever money I can to live on.

Best regards,

Frank T. Dyer

Frank T. Dyer

Enclosures

Exhibit 5

P 209 858 489

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

SENT TO
Mr. John P. Warwick, Supervisor
STREET AND NO.
Benefits Section
TVA Retirement System
P.O., STATE AND ZIP CODE
Knoxville, TN 37902

POSTAGE $
CERTIFIED FEE ¢
CONSULT POSTMASTER FOR FEES
OPTIONAL SERVICES
SPECIAL DELIVERY ¢
RESTRICTED DELIVERY ¢
RETURN RECEIPT SERVICE
SHOW TO WHOM AND DATE DELIVERED ¢
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY ¢
SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY ¢
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY ¢
TOTAL POSTAGE AND FEES $
POSTMARK OR DATE
6-7-82

PS Form 3800, Apr. 1976

RETIREMENT SYSTEM TVA
KNOXVILLE, TENNESSEE [illegible]

STATEMENT SUPPORTING DISABILITY APPLICATION

This form must be completed, notarized, and submitted with the application for disability retirement (form RS-12). Every question should be answered fully. Use back of page if you need more space.

---

1. Name of member Frank Thomas Dyer Nearest age 48 Sex M

   Residence of member Route 1 - Box 48C 1 - Reagan, TN 38368

2. TVA division Construction Work location ~~Pickwick Lock Project~~ Pickwick Dam, TN 38365 Title Construction Inspector

   Name of supervisor Charles R. Smith Location Mat'ls Engr Unit - Pickwick Lock

3. Where can you be seen now? Pickwick Lock Project - Pickwick Dam, TN or Above Residence.

4. On what date was your health first affected by the present disability? November 19, 1976

5. Describe fully the symptoms of your present disability I injured my back when I fell at the Yellow Creek construction project in Mississippi on November 19, 1976, while participating in a survey project. I fell off a high, steep bank. I re-injured myself on March 23, 1982 by sliding down on some gravel while getting out of my truck. This has resulted in my being unable to lift any significant weight, being unable to bend or stoop or squat repeatedly. Also, I am in constant pain.

6. Are you wholly incapable of engaging in any gainful work? TVA says that I am.

   If so, from what date have you been so disabled? March 23, 1982

7. Are you wholly and continuously confined indoors? No

   If so, from what date?

8. Are you wholly and continuously confined to bed? No

   If so, from what date?

9. Is there any improvement in your condition? No

   Describe fully

10. When do you expect to be able to engage in some work? I do not know.

11. What have been your occupations since the present disability occurred? I have not engaged in any occupation since my last injury on March 23, 1982.

12. List name and address of each physician you have consulted at any time for the condition causing you to make this claim, and state the approximate date you last consulted each of them.

    Dr. Robert J. Barnett, Medical Arts Bldg., 668 W. Forrest, Jackson, TN 38301, and
    Dr. Harry Cosby, P. O. Box 2000, Iuka, MS 38852 (TVA doctor).

13. In what hospitals, sanitariums, clinics, or other institutions for treatment or examination have you been at any time for the condition causing you to make this claim? I have not been in any hospital, but I have been in the Barnett Orthopaedic Clinic, P.A., which is operated by Dr. Robert J. Barnett whose address is given above.

14. What illnesses or injuries have you had other than the present one? None

15. Was the cause of your disability in any way connected with your employment by TVA? Yes. As indicated above, I was injured on Nov. 19, 1976 at the Yellow Creek Nuclear Plant near Iuka, MS, by falling off a bank during work hours while performing my duties, and was re-injured in the same location on March 23, 1982.

If so, has any claim for compensation been filed under the Federal Employees Compensation Act, or is any such claim anticipated? I am filing for Federal Employees Compensation, but have not yet received any benefits. Case No. A06-299256.

(If the answer to question 15 is "yes" and if claim for compensation under the Federal Employees Compensation Act has been or is expected to be filed because of this disability, further information regarding the special provisions where disability results from a service-connected injury will be sent to you upon receipt of this application.)

Frank T Dyer
signature of member

Route 1, Box 48-C-1
street address

Reagan, TN 38368
city state zip

STATE OF)
) SS
COUNTY OF)

On this 4th day of June, 1982, appeared before me the said Frank T. Dyer, to me known and known to me to be the individual described in and who executed the foregoing instrument, and _he duly acknowledged to me that _he executed the same, and being duly sworn by me, made oath that the statements contained therein are true.

Notary Public

My Commission Expires February 4, 1984

My commission expires:

(SEAL)

TVA RETIREMENT SYSTEM

APPLICATION FOR DISABILITY RETIREMENT

Date June 4, 1982

To the Board of Directors:

I hereby apply for a Disability retirement benefit in accordance with the Rules and Regulations of the Retirement System.

Date of retirement May 21, 1982.

My date of birth January (month) 21 (day) 1934 (year). My Social Security No. 329-28-8437.

I want my retirement benefit to be based on my average salary for the last three years unless my average for the following period is higher [complete only if you think the average for some other three-year period might be higher]:

The three successive years of service from N/A to N/A.

[See Instructions, paragraph 5, and then check one of the following paragraphs.]

☒–MAXIMUM monthly for life–no survivor benefit
I have read the explanation of the rules and regulations in paragraph 5 of the attached instructions about options I may choose, but I want my retirement allowance payable only as long as I live. I understand that this provides me the maximum monthly amount during my lifetime but leaves nothing payable by the Retirement System to a surviving beneficiary or my estate after my death.

☐–REDUCED monthly for life–with survivor benefit
I have read the explanation of the rules and regulations in paragraph 5 of the attached instructions about optional benefits. I want to receive my allowance under the provisions of Option ______. The beneficiary I would name to receive the benefit at my death is ______, (______ relationship, ______ date of birth). Send me a form for this option.

[Notary's signature required only if you check MAXIMUM above.]

Frank T Dyer
signature

Subscribed and sworn to before me this
4th day of June, 19 82

Notary Public

My commission expires:
My Commission Expires February 4, 1984

Present address:
Route 1, Box 48-C-1 (street)
Reagan, (city) TN (state) 38368 (zip)

Permanent address:
Same (street)
(city) (state) (zip)

RS-12 (12-81)

Federal Employees' Group Life Insurance Program

FEGLI

ELECTION OF POST-RETIREMENT BASIC LIFE INSURANCE COVERAGE

A GENERAL INSTRUCTIONS:

- **Read the accompanying information carefully**
- **Type or print in ink**
- **Return completed form to your employing office**

B **Fill in identifying information requested below**

Name (*Last*)	(*First*)	(*Middle*)	Date of Birth (*Month, day, year*)	Social Security Number		
Dyer	Frank	Thomas	1-21-34	329	28	8437
Employing Department or Agency			Agency Location (*City, State, Zip Code*)			
Tennessee Valley Authority			Knoxville, TN 37902			

C By completing this form, you are choosing the amount of basic life insurance coverage you will have after you reach age 65. If you are already age 65 or older, and you choose the 75% Reduction or the 50% Reduction, that reduction will begin at retirement.

SIGN AND DATE ONE OF THE BOXES BELOW. *(DO NOT SIGN MORE THAN ONE.)* THEN CROSS OUT THE OTHER TWO BOXES. Failure to cross out the two boxes will not invalidate the form.

1 I WANT THE 75% REDUCTION	**2** I WANT THE 50% REDUCTION	**3** I WANT NO REDUCTION
I WANT THE 75% REDUCTION. I understand that after I reach age 65 (or upon retirement, if I'm older than 65) the amount of my basic insurance coverage will reduce at the rate of 2% per month until it reaches 25% of my basic insurance amount at retirement. I understand that I cannot change my election to a lesser reduction at a later date.	I WANT THE 50% REDUCTION. I understand that after I reach age 65 (or upon retirement, if I'm older than 65) the amount of my basic insurance coverage will reduce at the rate of 1% per month until it reaches 50% of my basic insurance amount at retirement. I understand that the only change I may make at a later date is to the 75% reduction. I authorize deductions to be made from my annuity or compensation to pay the full cost of this additional protection.	I WANT NO REDUCTION. I understand that there will be no reduction in the amount of my basic insurance coverage after I reach age 65 (or upon retirement, if I'm older than 65). I further understand that I cannot later change to the 50% reduction, but can change to the 75% reduction. I authorize deductions to be made from my annuity or compensation to pay the full cost of this additional protection.
Signature *(Do not print)*	Signature *(Do not print)*	Signature *(Do not print)* ✓ Frank T. Dyer
Date	Date	Date 6-4-82

PRIVACY ACT STATEMENT

Public law 96-427, Federal Employees' Group Life Insurance Act of 1980, authorizes the solicitation of this information. The data you furnish will be used to determine the amount of life insurance coverage you have after retirement.

This information may be shared with national, state, local, or other charitable or social security administrative agencies to determine and issue benefits under their programs, or when they are investigating a violation or potential violation of civil or criminal law. Executive Order 9397 (November 22, 1943) authorizes the use of the Social Security Number to distinguish between you and people with similar names. Furnishing your Social Security Number, as well as other data, is voluntary, but failure to do so may result in the inability of your retirement system to provide you the level of insurance protection you want.

United States Office of Personnel Management
FPM Supplement 890-1

Standard Form 2818
(formerly OPM Form 1452)
April 1981

Option A–Standard

Your Option A–Standard Life Insurance (normally $10,000 coverage) may be continued after you retire, if (1) you were insured for the last 5 years immediately before your retirement, or for all of your service during which this option was available to you if less than 5 years, (2) you do not convert it to an individual policy, and (3) you continue your Basic Life coverage. Accidental Death and Dismemberment benefits terminate at retirement.

Withholdings will continue to be made for your Option A–Standard, until you reach age 65, if you retire before that age. No further withholdings are made after you are age 65 and retired.

When you retire at age 65 or over, or when you reach age 65 if you retire before that age. Your Option A–Standard will reduce by 2% each month until it reaches 25% of its face value. The first reduction is effective at the end of the month in which you reach age 65, or your retirement, whichever is later.

Option B–Additional

Your Option B–Additional life insurance may also be continued into retirement if (1) you had been insured for all of your service during which this coverage was available to you, or for the 5 years of service immediately before your retirement, (2) you do not convert to an individual policy, and (3) you continue your Basic Life. The amount of your Option B–Additional coverage will be the amount of your annual basic pay at retirement, rounded to the next exact $1,000 times the lowest multiple in effect for:

a. the full period of service during which the Option B–Additional coverage was available to you, if covered less than 5 years, or

b. the 5 years of service immediately preceding the date of retirement.

This amount will then reduce each month, effective at the end of the month in which you became age 65, by 2% per month for 50 months, at which time coverage will end. Withholdings from your annuity will continue until age 65. No further withholdings are required after you are age 65 and retired.

Option C–Family

You may also continue Option C–Family into retirement if (1) you had been insured for all of your service during which this coverage was available to you, or for the 5 years of service immediately before your retirement, (2) you do not convert to an individual policy, and (3) you continue your Basic Life.

Effective at the end of the month following the month in which you became age 65, your Option C–Family insurance will be reduced by 2% per month for 50 months, at which time coverage will end. Withholdings from your annuity will continue until age 65. No further withholdings are required after you are age 65 and retired.

CHANGING AMOUNT OF INSURANCE AFTER RETIREMENT

You may reduce or cancel coverage at any time, but you may not increase it as a retiree. The reduction or cancellation will be effective at the end of the month in which your retirement system receives your election. No premiums you have paid through that month can be refunded to you. For more information contact your retirement system.

IF YOU ARE RECEIVING WORKERS' COMPENSATION

At the end of 12 months continuous leave-without-pay, your FEGLI insurance will either terminate or be continued for you as a compensationer. If you are receiving benefits from the Office of Workers' Compensation Programs (OWCP), your Basic Life insurance may be continued if you have had it for the 5 years of service immediately preceding the entitlement to compensation (or the full periods of service during which you were eligible for FEGLI, if you had it less than five years). The requirements for continuing any optional insurance you may have are the same as those for retiring employees.

You have the opportunity to convert all or a portion of the insurance coverage(s) you were carrying to an individual direct-pay conversion policy. If you do not convert and you are otherwise eligible to continue your coverage as a compensationer, your FEGLI coverage will be subject to the same reductions and withholdings as if you were retired.

See SF 2817A (SF 2817B for Postal Employees) for complete information about the Federal Employees' Group Life Insurance Program.

©U.S. GOVERNMENT PRINTING OFFICE: 1981-337-249/5541

CONTINUATION OF COVERAGE

Basic Life

Your Basic Life coverage may be continued when you retire if: (1) you retire on an immediate annuity, (2) you had been insured for Basic Life or "Regular insurance" coverage for the last five years preceding your retirement (or from your earliest opportunity, if covered less than 5 years), and (3) you do not convert it to an individual direct-pay policy. The amount of your Basic Life coverage depends upon your age and the level of protection you want to retain after you reach age 65 (or retire, if later). Generally, your **Basic Insurance Amount** (BIA), which is your final annual basic pay, rounded to the next exact thousand, plus $2,000, continues until you reach age 65, subject to the Age Multiplication Factor shown on the right. At the time you retire, you may elect the level of protection you want to have after reaching age 65 (see the Basic Life Election table, below). The cost of your Basic Life also depends upon the level of protection you elect. (NOTE: The amount of coverage does not begin to reduce until the end of the month following the month in which you reach age 65.) Accidental Death and Dismemberment coverage terminates at retirement.

If you choose the 50% Reduction (election 2, below) or No Reduction (election 3, below) the full cost of the additional protection will be deducted from your annuity. The withholdings begin at retirement and continue for life or until the election is cancelled or coverage is otherwise discontinued.

The election of the 50% Reduction or No Reduction must be made at the time you retire. You may cancel either election later. If you cancel, the amount of your life insurance will be computed as if you had originally elected the 75% Reduction. Withholdings will stop, but you will not be entitled to a refund of the withholdings already paid.

Extra Benefit effective October 1, 1981 for annuitants under age 45: On October 1, 1981 the amount of Basic Life insurance payable (but not the cost) increases for annuitants and compensationers under age 45. The amount of coverage will be determined by multiplying the **Basic Insurance Amount** by a factor based on the age of the annuitant or compensationer, as follows:

Age	Factor
35 or under	2.0
36	1.9
37	1.8
38	1.7
39	1.6
40	1.5
41	1.4
42	1.3
43	1.2
44	1.1
45 or over	1.0

BASIC LIFE ELECTION	COST PER $1,000 OF BIA*	
	MONTHLY	BIWEEKLY
1. **75% REDUCTION**—reduces 2% per month after reaching age 65, to a minimum of 25% of the amount at retirement	Nothing	Nothing
2. **50% REDUCTION**—reduces 1% per month after reaching age 65, to a minimum of 50% of amount at retirement	$.65 per $1,000	$.30 per $1,000
3. **NO REDUCTION**—100% of the amount of life insurance coverage at retirement is retained after reaching age 65	$1.75 per $1,000	$.81 per $1,000

*BIA - Your final annual basic pay, rounded to the next exact $1,000, plus $2,000.

How to complete Standard Form 2818, "Election of Post-Retirement Basic Life Insurance Coverage".—After reading the instructions in section A and filling in section B, carefully follow the instructions in section C:

- If you want the 75% REDUCTION, sign and date in BOX 1
- If you want the 50% REDUCTION, sign and date in BOX 2
- If you want NO REDUCTION, sign and date in BOX 3

Cross out the two boxes you did not sign, then give the completed form to your employing office to forward to your retirement system with your other retirement papers.

If you do not make an election before your retirement claim is finalized (or your request to continue insurance during receipt of compensation is finalized), the 75% Reduction will be applied to your basic life insurance. You will have no later opportunity to choose a lesser reduction.

SEE BACK FOR INFORMATION ABOUT CONTINUATION OF OPTIONAL COVERAGE.

BLUE CROSS
BLUE SHIELD **THROUGH THE** **F IREMENT SYSTEM** TVA

(see information on other side of this form)

YOUR NAME AND ADDRESS	Social Security No.	Date of Birth			Age
		Mo.	Day	Yr	
Frank T. Dyer Route 1, Box 48-C-1 Reagan, TN 38368	329-28-8437	1	21	34	48
NAME OF WIFE OR HUSBAND Blanche W. Dyer	323-32-6065	11	24	39	42
NAMES OF UNMARRIED DEPENDENT CHILDREN*					
1 Frank T. Dyer, Jr. (deaf and retarded)	413-17-3571	12	25	57	24
2					
3					
4					

*If you have more than 4 unmarried dependent children, list on a separate sheet. Please indicate relationship if child is not yours by birth — for example, legal adoption, legal guardianship, or other.

I now have Blue Cross Coverage in:

☐ — Alabama ☒ — Tennessee Blue Cross Group No. ____________ ☐ — Individual

☐ — Kentucky ☐ — ________ Contract No. ________________ ☒ — Family

This is through my employment at TVA with their group coverage.

MEMBERS OF FAMILY ENROLLED FOR MEDICARE HOSPITAL INSURANCE (PART A) AND MEDICAL INSURANCE (PART B)

I want to enroll for the TVA Retirement System Supplement to Medicare for:

☒ — Myself
☒ — My wife or husband
☒ — Other dependent (disabled)

I am now only 48 years of age and am not eligible for Medicare, but wish this coverage in the event I become eligible for Medicare. I am going to apply for disability insurance benefits.

Enroll in:
☐ — Alabama
☒ — Tennessee

OTHER MEMBERS OF FAMILY OR UNMARRIED DEPENDENT CHILDREN UNDER 25

I want to continue coverage in the group plan for annual salary policy employees for:

☐ — Myself ☐ — My wife or husband
☐ — My child or children only—if parent(s) enrolled for Medicare
☒ — My family (2 adults with or without children OR 1 adult with 1 or more children)

See your Medical Insurance Plan booklet for persons eligible as dependents.

I understand that medical insurance premiums will be deducted from my monthly checks. (If I pay cash, I agree to pay in advance, directly to the TVA Retirement System, the amount required to cover premiums for the medical insurance I have chosen above.)

Sign here → Frank T Dyer Date 6-4-82

For Retirement System Use Only

Retirement No. ____________

Group No. 08873	$ ________		Effective Date ________
07537	________		
15046	No. ________		Ins. Code ________
15047	$ ________		
15048	________		
15049	________		Deduction ________
15142	________		

RS-100 (1-74)

INFORMATION AND INSTRUCTIONS

Enrollment for Medicare Hospital Insurance (Part A) and Medical Insurance (Part B) is the all-important factor in determining the medical insurance that is available to you and members of your family through the TVA Retirement System (TVARS); for the cost, see monthly premium charges on enclosed card. If your monthly check comes from the Civil Service Retirement System (CSRS), you have the same eligibility privileges as though you were a member of TVARS, but you will mail checks to the Retirement System at least quarterly to cover premium charges.

This form must be returned no later than the date on which your first monthly retirement check is due. If you do not want to continue medical insurance through TVARS, check the Refusal block below, sign, and return. Whether or not you or your wife/husband continue insurance below age 65, TVARS will notify you about six weeks before age 65 and offer you an opportunity to enroll for the Supplement to Medicare. If you, or a member of your family, become eligible for Medicare before reaching age 65, you must notify TVARS.

Members of family enrolled for Medicare Hospital Insurance (Part A) and Medical Insurance (Part B)

When you or a member of your family enrolls for Parts A and B of Medicare you are eligible to enroll for the Supplement to Medicare (see enclosed folder), if you receive a monthly check from the TVARS or CSRS. If, when you reach age 65, you do not have enough quarters of social security coverage to enroll for hospital insurance under Medicare, you may enroll for medical insurance under Medicare and remain under the salary policy employee plan for other benefits.

Members of family not yet eligible to enroll for Medicare

The Blue Cross group medical insurance plan for annual salary policy employees provides that, if you are enrolled under the plan at the time you retire, you may continue your present insurance until you enroll for Medicare Parts A and B by having the premium deducted from your monthly check from the TVARS. It also provides that if you are a surviving spouse of an active or retired employee you may continue this insurance if you receive a monthly check from TVARS or CSRS; eligibility ceases, however, upon remarriage.

In the event one member of your family is enrolled for Medicare and one or more members are not yet eligible for Medicare, individual or family coverage may be continued for those not yet eligible.

Notification to Retirement System

Form RS-100 is on the other side. Insert information about your family members and present insurance, and indicate the insurance coverage you want. This form authorizes TVARS to deduct premium payments from your monthly checks. Sign and return the form to:

Executive Secretary
TVA Retirement System
Knoxville, Tennessee 37902

Refusal

☐ I do not want medical insurance through the TVA Retirement System. I understand I won't have another chance to get it.

Sign here ______________________ ______________
Date

FEGLI

NOTICE OF CONVERSION PRIVILEGE
Federal Employees' Group Life Insurance Program

INSTRUCTIONS TO EMPLOYING AGENCY

Give this notice, as required, to every employee on the date insurance terminates (except by waiver) and to the family of a deceased employee who was covered under the Option C—Family coverage. Also, upon request, give this notice to the family of a separated employee who does not want to convert his or her Option C—Family coverage.

1. Fill in the date this notice is issued, and note this date in your records for possible future reference.
2. Fill in the name and address of the office which issues this notice (overprint or stamp if desired).
3. Also complete the agency certification in Part B if this notice is being issued to the family of a deceased Federal employee or to the family of a separated employee who does not want to convert his or her Option C—Family coverage.

Date of this notice: May 21, 1982

Name and mailing address of agency, including ZIP Code:

PART A — Conversion Privilege for Separated Employees

You are entitled to convert to an individual direct-pay policy unless, within 3 calendar days after the date your insurance terminates, you return to Government service in the same or another position in which you are eligible to reacquire Federal Employees' Group Life Insurance. You may purchase an individual policy in an amount equal to or less than your Basic Life insurance plus any optional coverage you may have. See the back of this form for general information about your conversion privilege.

NOTE: If you have Option C—Family insurance and you do not convert it, your eligible family members may do so. In that case, have your former employing office complete the Agency Certification in Part B, below, and give the form to your family members.

The time in which you may convert is limited—the completed SF 2821, Agency Certification of Insurance Status, (not this form) must be mailed to the Office of Federal Employees' Group Life Insurance within 31 days after your group life insurance terminates, or within 15 days after the date of this notice, whichever gives you more time.

How to Convert—If you wish to convert to an individual direct-pay policy, you must:

1. Ask the agency identified above to give you a completed SF 2821, Agency Certification of Insurance Status, and
2. Follow the instructions printed on the Agency Certification of Insurance Status and mail it to the Office of Federal Employees' Group Life Insurance, 4 East 24th St., New York, NY 10010. That office will promptly mail you detailed information on how to apply for conversion, together with a list of insurance companies eligible to convert your insurance.

PART B — Conversion Privilege for Family Members of a Deceased or Separated Employee

The Federal employee named below had Option C—Family insurance in the amount of $5,000 for a spouse and $2,500 for each eligible child. Eligible family members of a Federal employee covered by Option C—Family insurance may convert to an individual direct-pay policy upon the death of the covered employee or upon seperation of a covered employee who does not want to convert the Option C—Family insurance. Eligible family members are the employee's spouse and unmarried dependent children under age 22 (including adopted children, step children who lived with the employee in a regular parent-child relationship, and recognized natural children) and unmarried dependent children over age 22 who are incapable of self-support because of a mental or physical disability which existed before reaching age 22. See the back of this form for general information about your conversion privilege.

The time in which you may convert is limited—You must complete this form and mail it to the Office of Federal Employees' Group Life Insurance (OFEGLI) within 31 days after the death or seperation of the employee, or within 15 days after the date of this notice, whichever gives you more time.

How to convert—If, after reading the information above and on the back of this form, you wish to convert to an individual direct-pay policy, you must:

1. In the space provided on the back of this form, list the eligible family members who wish to convert and provide the name and address where OFEGLI should mail additional information about conversion.
2. Mail the completed form to the Office of Federal Employees' Group Life Insurance, 4 East 24th St., New York, NY 10010. That office will promptly mail you detailed information on how to apply for conversion, together with a list of insurance companies eligible to convert your insurance.

Agency Certification

Name of employee *(Last, First, Middle)*	Date of Birth *(Month, Day, Year)*	Date of death or seperation *(Mo., dy., yr.)*
Dyer, Frank Thomas	1-21-34	5-21-82

I certify that the above named employee had Option C-Family life insurance coverage at the time of death or seperation.

Signature of Authorized Agency Official	Title
Typed name of Authorized Agency Official	Commercial Telephone number *(including area code)*

31 DAY EXTENSION OF COVERAGE—Under certain circumstances, life insurance is payable if death occurs within 31 days after the group life insurance terminates, regardless of whether conversion had been requested. If death occurs within this period, further information concerning possible benefits may be obtained from the agency named above.

Office of Personnel Management
FPM Supplement 870-1

Standard Form 2819 (formerly SF 56)
April 1981
Previous form is unusable

INFORMATION ABOUT YOUR CONVERSION PRIVILEGE

Any individual policy purchased under a conversion privilege is a private [illegible]ness transaction between you and the eligible insurance company you se[illegible] Here are the important things you should know about your conversion privilege:

- No medical examination is required.
- You must pay the life insurance premium applicable to the type of policy you select and your age and class of risk.
- The Government will not pay any part of the premium cost of your individual policy.
- [illegible] individual policy may be issued by any insurance company you select from the list of eligible companies which you will receive if you apply for conversion.
- Your individual policy may be in any form customarily issued by the insurance company, except term insurance, but without disability or accidental death and dismemberment benefits.
- The time you have to convert is limited. If you do not act promptly, you will lose your conversion right.

TYPES OF POLICIES

The type of individual policy you select should be determined by the purpose which the policy is to serve, taking into account your other financial plans and resources. There are three basic forms of permanent policies, however, and other life insurance policies are primarily combinations or modifications of these three. The three basic policies are:

- An Ordinary Life policy, also known as a Whole Life policy or a Straight Life policy, provides lifetime protection in return for premium payments throughout your entire life. The policy builds a CASH VALUE after one, two, or three years. Y[illegible] may withdraw this cash if you decide to stop paying premiums. Also [illegible] may borrow upon it at any time for any purpose.
- A Limited Payme[illegible] policy differs from Ordinary Life in three ways. First, while it als[illegible]vides lifetime protection, premiums are paid over a specific number of years—usually 10, 20, or 30, or until a certain age, such as 65. Secondly, the company must charge a higher annual premium during these years. Finally, because premiums are higher, the policy's CASH VALUE increases faster.
- Endowment policies emphasize savings. They pay you a sum of money at a future date named in the policy—such as at the end of 20 years or at age 65. If you do not live until that date, this sum of money is paid upon your death to a beneficiary named by you. Both premiums and CASH VALUE are higher than for the other types of policies.

COST OF INDIVIDUAL POLICY

Life insurance policies are issued on a participating or non-participating basis.

Premiums for participating policies are higher than those charged for non-participating policies. The part of a participating policy's premium which is found not to be needed to furnish protection is refunded in the form of an annual dividend to the policyholder. The first dividend is usually available after premiums have been paid for one, two, or three years. To obtain the net cost of a participating policy, you should deduct these yearly dividends from the premiums.

For non-participating policies, premiums are set as close as possible to the actual cost of insurance protection. The premium is the guaranteed cost to the policyholder. No dividends are paid under these policies.

The following are approximate premium rates on the participating basis for Ordinary Life, the Twenty-payment Life and Twenty-year Endowment policies. The rates are shown for ages 20 to 65 at five year age intervals. Premium rates for non-participating policies are somewhat lower and no dividend will be paid under those policies. The rates shown below are examples only and are not rates for any one company.

ANNUAL PREMIUM RATES PER $1,000 OF INSURANCE

AGE OF INSURED AT ISSUANCE OF POLICY	ORDINARY LIFE	20 PAYMENT LIFE	20-YEAR ENDOWMENT	AGE OF INSURED AT ISSUANCE OF POLICY	ORDINARY LIFE	20 PAYMENT LIFE	20-YEAR ENDOWMENT
	PARTICIPATING INSURANCE (ANY DIVIDENDS PAID WILL REDUCE THESE COSTS)						
20	$18.00	$30.00	$49.00	45	$39.00	$50.00	$57.00
25	$21.00	$33.00	$50.00	50	$47.00	$56.00	$62.00
30	$24.00	$36.00	$51.00	55	$58.00	$65.00	$69.00
35	$28.00	$40.00	$52.00	60	$73.00	$78.00	$79.00
40	$33.00	$44.00	$54.00	65	$94.00	$95.00	$96.00

FAMILY MEMBER'S APPLICATION FOR CONVERSION

To: Office of Federal Employees' Group
Life Insurance
4 East 24th Street
New York, NY 10010

I have read the information above and on the other side. The family members listed on the right are eligible for conversion to a direct-pay policy. Please send me additional information.

Signature (Do not print): Frank T Dyer

Date: 6-4-82

Type or print name: Frank T. Dyer

Mailing address (including Zip Code):
Route 1, Box 48-C-L
Reagan, TN 38368

ELIGIBLE FAMILY MEMBERS: Under "Relationship to Employee" show "spouse" or "child." If a child is adopted or is an eligible stepchild, recognized natural child, or disabled child, so indicate.

Name of eligible family member	Date of birth	Relationship to Employee
Blanche W. Dyer	11-24-39	Wife
Frank T. Dyer, Jr.	12-25-57	Son

Privacy Act Statement—Title 5, United States Code, Chapter 87, Life Insurance, authorizes solicitation of this information. The data you furnish will be used by the Office of Federal Employees' Group Life Insurance to determine eligibility for conversion of Option C—Family life [illegible]ance coverage. This information may be shared with national, state, local or other charitable or social security administrative agency to determine and issue benefits under their programs or law enforcement agencies, when they are investigating a violation or potential [illegible]ation of the civil or criminal law.

☆U.S. Government Printing Office: 1981—337-000/3048

Date June 4, 1982

TVA HEALTH OFFICER
Rxx ____________________

____
street

____
city state zip

Dear Doctor:

Please complete the attached report and send it directly to the TVA Retirement System, Knoxville, TN 37902.

Very truly yours,

Frank T Dyer
signature of patient

Route 1, Box 48-C-1
street

Reagan TN 38368
city state zip

Note to patient:

Fill in your doctor's name and address, sign the authorization, and return this in the enclosed envelope. The Retirement System will mail it to the physician.

RS-13b (8-71)

Date June 4, 1982

Dr. Robert J. Barnett
Medical Arts Building
668 W. Forrest
street
Jackson, TN 38301
city state zip

Dear Doctor:

Please complete the attached report and send it directly to the TVA Retirement System, Knoxville, TN 37902.

Very truly yours,

Frank T Dyce
signature of patient

Route 1, Box 48-C-1
street
Reagan, TN 38368
city state zip

Note to patient:

Fill in your doctor's name and address, sign the authorization, and return this in the enclosed envelope. The Retirement System will mail it to the physician.

RS-13b (8-71)

Date June 4, 1982

Dr. Harry Cosby

P. O. Box 2000
street

Iuka MS 38852
city state zip

Dear Doctor:

Please complete the attached report and send it directly to the TVA Retirement System, Knoxville, TN 37902.

Very truly yours,

Frank T Dyer
signature of patient

Route 1, Box 48-C-1
street

Reagan TN 38368
city state zip

Note to patient:

Fill in your doctor's name and address, sign the authorization, and return this in the enclosed envelope. The Retirement System will mail it to the physician.

RS-13b (8-71)

INA

APPLICATION FOR CONVERSION TO INDIVIDUAL POLICY OF ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE

Master Policy or Reference Number

THIS PART OF APPLICATION TO BE COMPLETED BY EMPLOYER

Name of insured employee or of employee's insured dependent

on____________ (date) terminated employment for reasons other than reaching mandatory retirement age or otherwise became ineligible for coverage under the group or blanket policy.

Prior to that date, the above individual was insured for $__________.

Signed ____________________

title ____________________

for ____________________ (organization)

date ____________________

THIS PART OF APPLICATION TO BE COMPLETED BY PROPOSED INSURED

INA Application is hereby made for conversion to an individual policy affording Accidental Death and Dismemberment Insurance

PROPOSED INSURED

Full Name Frank T. Dyer

Address Route 1, Box 48-C-1
Reagan, TN 38368

Date of Birth 1-21-34 Social Security Number 329-28-8437

Former Occupation: Construction Inspector, SE-4

New Occupation: None

I desire to convert $20,000.00 of my employee accidental death and dismemberment insurance to an individual policy.

I wish to pay premiums ☒ Annually ☐ Semi-Annually ☐ Quarterly, and my check (made out to "INA") in the amount of $________ is enclosed. Do not know premium. Please bill me for premium.

Death Benefit to be Paid (Print full name of Beneficiary and state Relationship to you)

Blanche W. Dyer, Wife

I have read the above statements and agree that they are accurate and complete to the best of my knowledge and belief. I understand that this insurance will be issued in reliance upon such statements.

Signature of Proposed Insured X Frank T Dyer Date 6-4-82

LG-6980

IF THE PROPOSED INSURED HAS PREVIOUSLY ASSIGNED OWNERSHIP OF HIS POLICY TO ANOTHER PERSON FOR ESTATE TAX PURPOSES—OR NOW WISHES TO DO SO—BOTH THE PROPOSED INSURED AND THE OWNER MUST SIGN THIS PART OF THE APPLICATION.

The answers to the questions contained in the application have been made by the proposed Insured at the request and on the behalf of the proposed Owner, and insurable interest in the proposed Insured exists on the part of not only the proposed Owner but also the beneficiary or beneficiaries designated in the application, which designation is that of the proposed Owner.

The proposed Owner adopts as a part of the application all of the statements and answers of the proposed Insured.

The proposed Insured agrees and understands that the proposed Owner, as assignee of all the proposed Insured's rights, privileges and interests under a group, blanket or individual policy, inclusive of a Conversion Privilege thereunder, is hereby exercising said Conversion Privilege and that all right, title and interest under the converted policy for which this application is submitted will become vested in the person named herein as proposed Owner.

If any interest or payment shall not vest in the proposed Owner, or in the beneficiary or beneficiaries designated hereunder, such interest or payment shall not revert to the proposed insured or his estate but shall become payable in such shares and to such persons as may be entitled to take from him under the intestate law of the state of the Insured's residence at the time of death.

Name of Proposed Owner ______________________

Address ______________________

City & State ______________________

Relationship to Proposed Insured ______________________

Dated at ______________________

this ________ day of ________ 19____

Signature of Proposed Owner ______________________

Signature of Proposed Insured ______________________

LG-6981

File - Frank Dyer Case

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
ATLANTA REGIONAL OFFICE

IN THE MATTER OF:

FRANK T. DYER,
Appellant,

v.

TENNESSEE VALLEY AUTHORITY,
Agency

DECISION NUMBER AT07528210991

Date: SEP 09 1982

INITIAL DECISION AND ORDER OF DISMISSAL

By petition filed June 4, 1982, Frank T. Dyer (hereinafter referred to as appellant) appealed to the Board from the action taken by the Tennessee Valley Authority, removing him from employment from the position of Construction Inspector, SE-4, effective May 21, 1982. The removal was based upon his inability to meet the requirements of the position. The appellant contends that the agency failed to accommodate his known physical limitations, in violation of the provisions of 29 C.F.R. § 1613.701(a) which prohibits discrimination against "qualified handicapped employees". Appellant also alleged that his removal was the result of discrimination based on age.

By motion received August 20, 1982, the appellant requested that his appeal be dismissed. He stated that even if he were successful in his appeal, his medical condition has deteriorated to the point that he could not return to his position and satisfactorily perform his required duties.

Upon consideration of that request, it is hereby ordered that the appeal be dismissed with prejudice. Having dismissed the appeal, the issue of discrimination need not be reached. See Crary v. Federal Aviation Administration, 1 MSPB 430 (1980); Alford v. Department of Health, Education and Welfare, 1 MSPB 305 (1980).

DECISION

The appeal is DISMISSED.

POTTS, YOUNG & BLASINGAME, ATTYS.
RECEIVED
SEP 13 1982
PER
FLORENCE, ALA.

Exhibit 6

NOTICE

This decision is an initial decision and will become a final decision of the Merit Systems Protection Board on ____________, unless a petition for review is filed with the Board or the Board reopens the case on its own motion.

Any party to the proceeding, the Director of the Office of Personnel Management, and the Special Counsel may file a petition for review of this decision with the Merit Systems Protection Board. The petition for review must set forth objections to the initial decision, supported by references to applicable laws or regulations, and with specific reference to the record.

The petition for review must be filed with the Secretary of the Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419, no later than the date set forth above.

After providing an opportunity for response by other parties, the Board may grant a petition for review when it is established that:

(a) New and material evidence is available that, despite due diligence, was not available when the record was closed;

(b) The decision of the presiding official is based upon an erroneous interpretation of statute or regulation.

Pursuant to 5 U.S.C. § 7703(b)(1)*, the appellant has the right to seek judicial review of the Board's final decision on this appeal. A petition requesting such review must be filed with the U.S. Court of Appeals for the Federal Circuit no later than 30 days after appellant's receipt of the Board's final order or decision.

*As modified by § 127 of the Federal Court Improvement Act of 1982, to be codified at 28 U.S.C. § 1209(a)(9).

For the Board:

Kenneth B. Friedman

KENNETH B. FRIEDMAN
Presiding Official

CERTIFICATE OF SERVICE

Copies of the foregoing initial decision were served this date by regular mail on the following:

Mr. Frank D. Dyer
Route 1, Box 48-C-1
Reagan, Tennessee 38368

Mr. Robert L. Potts
P. O. Box 1760
Florence, Alabama 35630

Mr. A. Jackson Woodall, Jr.
400 Summit Hill Drive, E11C57
Knoxville, Tennessee 37902

Office of the Secretary
Merit Systems Protection Board
1120 Vermont Avenue, N.W.
Washington, D.C. 20419

Office of the Special Counsel
Pershing Point Plaza, Room 317
1365 Peachtree Street, N.E.
Atlanta, Georgia 30309

Office of Policy Analysis
Office of Personnel Management
Attention: Jeanette Neville
1900 E Street, N.W., Room 3508
Washington, D.C. 20415

Assistant Managing Director
for Regional Operations
Merit Systems Protection Board
1120 Vermont Avenue, N.W.
Room 904
Washington, D.C. 20419

Constance Shepard
Clerk Typist
Atlanta Regional Office

Date 9/9/82
Atlanta, Georgia

CERT.D
AT:7/82

POTTS, YOUNG & BLASINGAME
ATTORNEYS
107 EAST COLLEGE STREET
P. O. BOX 1763
FLORENCE, ALABAMA 35631
(205) 764-7142

FRANK L. POTTS
ROBERT L. POTTS
ERNEST N. BLASINGAME JR.
[illegible]
T. MICHAEL PUTNAM
BRUCE L. MCKEE

[illegible]
[illegible]
[illegible]

August 23, 1982

Mr. A. Jackson Woodall, Jr.
Tennessee Valley Authority
Knoxville, TN 37902

Re: Frank T. Dyer v. Tennessee Valley Authority -
MSPB Case No. AT07528210991

Dear Jack:

This will confirm your agreement to contact appropriate persons connected with the Tennessee Valley Authority retirement system and Federal Employees Compensation, in connection with the above individual, who has dropped his Merit Systems Protection Board appeal due to his poor physical condition.

Anything you could do to help his applications for disability retirement and compensation to be speedily and favorably processed, would be greatly appreciated.

Best regards,

POTTS, YOUNG & BLASINGAME

Robert L. Potts

RLP:oh

Exhibit 7

POTTS, YOUNG & BLASINGAME
ATTORNEYS
107 EAST COLLEGE STREET
P. O. BOX 1760
FLORENCE, ALABAMA 35631
(205) 764-7142

FRANK V. POTTS
ROBERT L. POTTS
ERNEST N. BLASINGAME, JR.
N. MICHAEL SUTTLE
T. MICHAEL PUTNAM
BRUCE J. MCKEE

DOYLE R. YOUNG
RAY C. JOHNSON
OF COUNSEL

September 16, 1982

Dr. Louis L. Coker
Tennessee Valley Authority
Medical Center
Muscle Shoals, AL 35660

Re: Frank T. Dyer, Route 1, Box 48C-1,
Reagan, Tennessee 38368
OWCP No. A06-299256

Dear Dr. Coker:

This will confirm our conversation of September 14, that you will give special attention to Mr. Frank Dyer's OWCP claim which was misplaced in the Yellow Creek or Pickwick office from March of this year until the present time. He is in dire need of getting compensation benefits started. He is about to lose his home because he has not got compensation benefits nor retirement benefits yet approved.

I was appalled to learn that your compensation clerk at Pickwick had neglected this and several other similar matters, and it was only recently discovered by Bonnie Moore that Mr. Dyer's paperwork had not been sent to Knoxville or Jacksonville in connection with this claim.

You have indicated you will give priority to this claim and have Ms. Bonnie Moore, who is now handling these matters, to expedite this at all costs.

Thank you so much for your attention to this matter.

Best regards,

POTTS, YOUNG & BLASINGAME

Robert L. Potts

RLP:oh

cc: Mr. Frank T. Dyer

Exhibit 8

TENNESSEE VALLEY AUTHORITY
KNOXVILLE, TENNESSEE 37902

SEP 17 1982

SEP 20 1982

Robert L. Potts, Esq.
Potts, Young & Blasingame
107 East College Street
P.O. Box 1760
Florence, Alabama 35631

Re: Frank T. Dyer v. Tennessee Valley Authority -
MSPB Case No. AT07528210991

Dear Mr. Potts:

We have checked the status of Mr. Dyer's disability retirement claim and his Federal Employees' Compensation Act (FECA) claim to assure they are being processed.

Of course, our office does not have an interest or authority with regard to any particular decision made on either of these claims.

The TVA Retirement System has received the medical report from Dr. John Everett. Mr. Dyer's file has been referred to the Retirement System's independent medical board who will make a recommendation on which the Board of Directors of the Retirement System will act. The Board's decision will be final.

Mr. Dyer's FECA claim is still being processed at the field medical office level. We expect the field office to finish their work on the claim and forward information to our Workers' Compensation Unit in Chattanooga next week. That office assures us they will immediately process the claim and send it to the Office of Workers' Compensation Programs in Jacksonville, Florida. OWCP, of course, makes the determination as to Mr. Dyer's eligibility for benefits, not TVA. We regret the delay in processing the compensation claim at the field medical office.

Sincerely,

Jack Woodall

A. Jackson Woodall, Jr.
Staff Attorney

Exhibit 9

PREPARED STATEMENT OF GENE M. HAMBY, JR.

Mr. Chairman, I am Gene M. Hamby, Jr., of Sheffield, Alabama, testifying on behalf of Senate Bill 2296.

I am a practicing attorney and was licensed to practice law in the State of Alabama in the year 1968 and have been practicing law in Colbert County, Alabama, since that date. I have handled numerous Worker's Compensation Claims for Federal Employees before the United States Department of Labor. I am very familiar with the present law and I have written a paper analyzing the present law which has been presented to a meeting of the Alabama Trial Lawyers Association.

Based upon my years of experience as a practicing attorney representing injured Federal Employees, I want to state emphatically that the present compensation system is not working well. Justice is often being denied or being delayed to the point that injured or diseased Federal Employees and their families are suffering great hardships.

Senate Bill 2296 sets out to accomplish two goals to insure that injured and diseased Federal Employees can pursue their compensation claims in a fair and timely manner.

The first goal is to allow limited Court review. The present law does not allow Court review. See: 5, U.S.C., Section 8128.

It is manifestly unjust to deny the right of Court review to injured and diseased Federal Employees in their compensation claims. Congress has provided for Supplemental Security Income payments to disabled claimants who have not even paid in enough quarters in order to be allowed social security disability benefits. These claimants have a right of judicial review. On the contrary, injured and diseased Federal Employees who may have worked for many years or decades in the service of the Federal Government are denied the right of judicial review of their claims. Senate Bill 2296 seeks to remedy this unequal treatment by extending the right of judicial review to the claims of Federal Employees.

There are numerous reasons that judicial review of the claims of Federal Employees is crucial:

1. The Office of Workers' Compensation Programs may misinterpret the law. See: In the Matter of Annie W. Watkins, Widow of Henry W. Watkins, and Tennessee Valley Authority, U. S. Department of Labor, Employees' Compensation Appeals Board, Docket No. 82-790.

2. The claims of some injured and diseased Federal Employees have been subjected to unbelievable delays. Some claims have gone on for many years before they are finalized. See: In the Matter of William Lee Gargus and Tennessee Valley Authority, Employees' Compensation Appeals Board, Docket No. 74-73.

3. The Office of Workers' Compensation has virtually been given a "license to kill" under the present law. This office can do anything that it wants to because it is not subject to Court review. For example, this witness was representing a Federal Employee in a claim and the Office of Workers' Compensation ceased any correspondence with this writer. The subject employee informed me that he had received an award but my letters would go unanswered requesting that I be sent a copy of the award. I finally filed a mandamus in the case of Gene M. Hamby, Jr., vs. Esther R. Rahming, et. al., in the United States District Court for the Northern District of Alabama, CA79-P-0843-NW. Relief was denied because the present law prevents Court review. Consequently, the Office of Workers' Compensation Programs was able to destroy the meaning of 5 U.S.C., Section 8127, which permits a claimant to employ an attorney.

4. Court review is needed to put some form of restriction on the distance that the Office of Workers' Compensation can

make a claimant travel in order to pursue his claim. This witness had one instance where he represented an elderly widow who had crippling arthritis. The Office of Workers' Compensation attempted to hold her Hearing in Atlanta, Georgia, which is over 250 miles from her home.

The second goal of Senate Bill 2296 is to establish some standards for attorney's fees so that Federal Employees will be able to employ attorneys when they have a claim.

I can state with certainty that Federal Employees are having a difficult time finding attorneys who will handle their claims in my area of the country. I have received inquiries from injured Federal Employees in Tennessee and from many parts of Alabama requesting legal assistance. Attorneys do not want to handle the claims because of low and inconsistent attorney's fees, long delays in processing the claims and the possibility of having to travel long distances at great time and expense for Hearings. Under present circumstances, it is not unusual for an injured or diseased Federal Employee to have great difficulty in finding an attorney who will take the claim. This result frustrates the effect of 5 U.S.C., Section 8127.

The regulations on attorney's fees is found at Section 10.14 of the Rules and Regulations. The regulations provide that contingent contracts will not be recognized. The truth of the matter is that almost all claims have to be taken by attorneys on a contingent basis. It is an almost universal rule that an injured or diseased Federal Employee is unable to pay an attorney unless the claim is successful. Therefore, the fee is contingent. I have found that the Office of Workers' Compensation does not mind if the attorney does not get paid. It objects to a contingent fee if it means that the attorney is going to get an adequate fee represented by a percentage of the past-due compensation if the claim is successful.

Attorneys are not going to handle these claims if they are not going to be compensated if the claim is successful. The Employees' Compensation Appeals Board has even had to hold that an attorney's fee that was awarded was not fair and reasonable and would tend to deter attorneys from representing claimants in compensation cases. See: William Lee Gargus and Tennessee Valley Authority, Employees' Appeals Board, Docket No. 74-73.

I wholeheartedly commend Senate Bill 2296 to this Subcommittee. It is long past due and is essential to restore justice and equity to the legal system through which Federal Employees pursue compensation claims.

Mr. Chairman, I am grateful for the opportunity to express my views to you and to members of your Subcommittee. On behalf of the Federal Employees and their families of this great Nation, I urge your support of this legislation and hope that it will be favorably considered.

Respectfully submitted,

Gene M. Hamby, Jr.

Gene M. Hamby, Jr.

GMHjr/vg

Senator HEFLIN. Well, we appreciate you gentlemen being here. You have given some very enlightening testimony, documented by examples, and hopefully, something good will come of this for injured employees.

Thank you very much.

[Whereupon, at 12:55 p.m., the subcommittee was adjourned.]

APPENDIX

PROPOSED LEGISLATION

97TH CONGRESS
1ST SESSION

S. 1403

To amend section 376 of title 28, United States Code, in order to reform and improve the existing program for annuities for survivors of Federal Justices and judges.

IN THE SENATE OF THE UNITED STATES

JUNE 19 (legislative day, JUNE 1), 1981

Mr. MOYNIHAN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend section 376 of title 28, United States Code, in order to reform and improve the existing program for annuities for survivors of Federal Justices and judges.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Survivors' Annuities Reform Act of 1981."

SEC. 2. (a) Subsections (b) and (d) of section 376 of title 28, United States Code, are amended by striking out "4.5 percent" each place it appears and inserting in lieu thereof "5.5 percent".

(b) Subsection (h)(1)(B) of section 376 of title 28, United States Code, is amended by striking clauses (i) and (ii) and inserting in lieu thereof:

"(i) 10 percent of the average annual salary amount determined in accordance with the provisions of subsection (1) of this section; or

"(ii) 20 percent of such average annual salary amount, divided by the number of children;".

(c) Subsection (h)(1)(C) of section 376 of title 28, United States Code, is amended by striking clauses (ii) and (iii) and inserting in lieu thereof:

"(ii) 20 percent of the average annual salary amount determined in accordance with the provisions of subsection (1) of this section; or

"(iii) 40 percent of the average annual salary amount, divided by the number of children;"

(d) Subsection (1) of section 376 of title 28, United States Code, is amended:

(i) by striking out "1¼ percent" and inserting in lieu thereof "1.5 percent"; and

(ii) by striking out the existing proviso and inserting in lieu thereof: *Provided,* That such annuity shall not exceed an amount equal to 55 percent of such average annual salary, nor be less than an amount equal to 30 percent of such average annual salary, and that any amount determined in accordance with the provisions of this subsection shall be reduced to the extent required by subsection (d) of this section, if applicable.".

(e) Subsection (h)(2) of section 376 of title 28, United States Code, is amended by striking out the period following "remarriage" and adding "prior to the attainment of sixty years of age.".

SEC. 3. The benefits conferred by this Act shall immediately become available to any individual becoming eligible for an annuity under section 376 of title 28, United States Code, on or after the date upon which this Act becomes effective: *Provided*, That although the rights of any judicial official electing to come within the purview of section 376 of title 28, United States Code, on or after the date upon which this Act becomes effective, shall be determined exclusively under the provisions of that section as amended by this Act, nothing in this Act shall be interpreted to cancel, abrogate or diminish any rights to which an individual or his or her survivors may be entitled by virtue of that individual having contributed to the judicial survivors annuity fund before the date upon which this Act becomes effective.

SEC. 4. At any time within one hundred and eighty days after the date upon which this Act becomes effective, any judicial official who has been participating in the judicial survivors annuity program created by the Act of October 19, 1976 (90 Stat. 2603), shall be entitled to revoke his or her earlier election to participate in that program and thereby completely withdraw from participation in the program as reformed by this Act: *Provided,* That (a) any such revocation may be effected only by means of a writing filed with the Director of the Administrative Office of the United States Courts, (b) any such writing shall be deemed to have become effective no sooner than the date upon which that writing is received by the Director, (c) upon receipt of such a writing by the Director, any and all rights to survivorship benefits for such judicial official's survivors shall terminate, and all amounts credited to such judicial official's individual account, together with interest at 3 percent per annum, compounded on December 31 of each year to that date of revocation, shall thereafter be returned to that judicial official in a lump-sum refund payment, and (d) any judicial official who effects such a revocation and who subsequently again becomes eligible and elects to join the judicial survivors annuities program created by this Act under the provisions of section 376 of title 28, United States Code, as amended by this Act, shall be permitted to do so only upon the redeposit of the full amount of the refund obtained under this section plus interest at 3 percent per annum, compounded on December 31 of each year from the date of the revocation until the date upon which that amount is redeposited. Any judicial official who fails to effect a revocation in accordance with the right conferred by this section within one hundred and eighty days after the date upon which this Act becomes effective shall be deemed to have irrevocably waived the right to that revocation.

SEC. 5. This Act shall become effective on the first day of the third month following the month in which it is enacted, or on October 1, 1981, whichever occurs last.

II

97TH CONGRESS
1ST SESSION

S. 1529

To establish a National Court of Appeals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29 (legislative day, JULY 8), 1981

Mr. HEFLIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To establish a National Court of Appeals, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Court of Appeals Act of 1981".

ESTABLISHMENT OF COURT

SEC. 2. (a) Part I of title 28, United States Code, is amended by inserting immediately after chapter 1 of such title the following new chapter:

“CHAPTER 2—NATIONAL COURT OF APPEALS

“Sec.
“21. Establishment and composition of court.
“22. Chief judge; precedence of associate judges.
“23. Tenure, salary, and retirement.
“24. Principal seat and terms.
“25. Seal.
“26. Sessions.
“27. Hearings and quorum.
“28. Disqualification of judges.

“§ 21. Establishment and composition of court

“(a) There shall be a National Court of Appeals which shall be composed—

“(1) of a chief judge appointed by the President, by and with the advice and consent of the Senate; and

“(2) eight associate judges appointed by the President, by and with the advice and consent of the Senate; and

“(b) The Chief Justice of the United States Supreme Court, upon a request by the chief judge of this court, may assign judges from circuit courts of appeals on a temporary basis to sit and act at such times and places as is necessary to carry out the purposes of this chapter.

“§ 22. Chief judge; precedence of associate judges

“(a) If the chief judge is temporarily unable to perform his duties as such, or if such chief judge resigns or retires, such duties shall be performed by the associate judge who, according to seniority, is next in precedence.

"(b) The associate judges shall have precedence according to the seniority of their commissions. Associate judges whose commissions bear the same date shall have precedence according to seniority in age.

"§ 23. Tenure, salary, and retirement

"(a) The judges of the National Court of Appeals shall hold office during good behavior.

"(b) Each judge of the National Court of Appeals shall receive a salary at the same annual rate as judges of the circuit courts of the United States pursuant to section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361), as adjusted by section 461 of this title.

"(c) The judges of the National Court of Appeals shall be subject to the resignation and retirement provisions of chapter 17 of this title.

"§ 24. Principal seat and terms

"The principal seat of the National Court of Appeals shall be in the District of Columbia. The court may sit at such times and places within the United States as the court may designate.

"§ 25. Seal

"The National Court of Appeals shall have a seal which shall be judicially noticed.

"§ 26. Sessions

"The time and place of the sessions of the National Court of Appeals shall be prescribed by the chief judge pursuant to rules of the court.

"§ 27. Hearings and quorum

"(a) The chief judge shall be responsible for the administration of the court.

"(b) The court may authorize the hearing and determining of cases and controversies by separate panels, each consisting of three, five, seven, or nine judges as the court determines. Such panels shall sit at the times and places and hear the cases and controversies assigned as the court directs.

"(c) The Court of Appeals judges shall sit on the court and its panels in such order and at such times as the court directs.

"(d) The court may order a hearing or rehearing before the court en banc. A court en banc shall be comprised of judges in regular active service pursuant to the provisions of this chapter. In addition, a court en banc shall include those circuit court of appeals judges who served on the panel which originally heard the case in question.

"§ 28. Disqualification of judges

"No judge shall hear or determine an appeal from the decision of a case or issue therein heard or tried by such judge.".

(b) The analysis of part I of title 28, United States Code, is amended by inserting immediately below the item relating to chapter 1 of such part, the following new item:

"2. National Court of Appeals.. 21".

OFFICERS AND EMPLOYEES

SEC. 3. (a) Part III of title 28, United States Code, is amended by inserting immediately after chapter 45 of such title, the following new chapter:

"CHAPTER 46—NATIONAL COURT OF APPEALS

"Sec.
"691. Clerk and employees.
"692. Law clerks and secretaries.
"693. Librarian, marshal, and bailiffs.

"§ 691. Clerk and employees

"(a) The National Court of Appeals may appoint a clerk who shall be subject to removal by the court. The court may appoint or authorize the appointment of such other officers and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts.

"(b) The officers and employees of the court shall be subject to the removal by the court or, if the court so determines, by the clerk or other officer who appointed them, with the approval of the court.

"(c) The clerk shall pay into the Treasury all fees, costs, and other moneys collected by him and make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him.

"§ 692. Law clerks and secretaries

"The judges of the National Court of Appeals may appoint such law clerks and secretaries as may be necessary.

"§ 693. Librarian, marshal, and bailiffs

"(a) The National Court of Appeals may appoint a librarian and necessary library assistants who shall be subject to removal by the court.

"(b) The National Court of Appeals may appoint a marshal, who shall be present whenever the court is in session, be custodian of its courthouse, have supervision over its custodial employees, take charge of all property of the United States used by the court or its employees, and perform such other duties as the court may direct. The marshal shall be subject to removal by the court. The marshal, with the approval of the court, may employ necessary bailiffs. Such bailiffs shall attend the court, preserve order, and perform such other necessary duties as the court or marshal may direct. The bailiffs shall receive the same compensation as bailiffs employed for the district courts.".

(b) The analysis of part III of title 28, United States Code, is amended by inserting immediately below the item relating to chapter 45 of such title the following new item:

"46. National Court of Appeals.. 691".

JURISDICTION AND REVIEW

SEC. 4. (a) Part IV of title 28, United States Code, is amended by adding immediately after chapter 81 of such title the following new chapter:

"CHAPTER 82—NATIONAL COURT OF APPEALS

"Sec.
"1271. Jurisdiction.
"1272. Finality of decisions.

"§ 1271. Jurisdiction

"The National Court of Appeals shall have jurisdiction of cases referred to it by the Supreme Court.

"§ 1272. Finality of decisions

"(a) The National Court of Appeals may deny review in any case referred to it by the Supreme Court unless directed by the Supreme Court to decide the case.

"(b) Unless modified or overruled by the Supreme Court, the decisions of the National Court of Appeals shall be binding on all courts of the United States, and, with respect to questions arising under the Constitution, laws, or treaties of the United States, on all other courts.".

(b) Chapter 81 of title 28, United States Code (relating to the jurisdiction of the Supreme Court), is amended by adding at the end thereof the following new section:

"§ 1259. National Court of Appeals

"(a) After denying certiorari or in lieu of noting probable jurisdiction of an appeal in any case before it, the Supreme

Court may refer any such case to the National Court of Appeals. The Supreme Court may, and in cases subject to review by appeal shall, direct the National Court of Appeals to decide any case so referred.

"(b) Any case in the National Court of Appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any such case before or after rendition of judgment or decree.".

(c)(1) The analysis of part IV of title 28, United States Code, is amended by inserting immediately below the item relating to chapter 81 of such title, the following new item:

"82. National Court of Appeals.. 1281".

(2) The analysis of chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1259. National Court of Appeals.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 5. (a)(1) The first paragraph of section 331 of title 28, United States Code, is amended by inserting immediately after "shall summon annually" the following: "the chief judge of the National Court of Appeals,".

(2) The third paragraph of such section 331 is amended by inserting immediately before the first sentence the following new sentence: "If the chief judge of the National Court of

Appeals is unable to attend, the Chief Justice may summon any other judge from such court.".

(b)(1) Section 372(a) of title 28, United States Code, is amended—

(A) by inserting in the third paragraph immediately following "Supreme Court," the following: "the chief judge of the National Court of Appeals,"; and

(B) by inserting in the fifth paragraph, after "Patent Appeals," the following: "the National Court of Appeals,".

(2) Section 372(b) of title 28, United States Code, is amended—

(A) by inserting immediately after "Chief Justice of the United States in the case of" the following: "the chief judge of the National Court of Appeals or"; and

(B) by inserting immediately after "chief judge of his court in the case of a judge of the" the following: "National Court of Appeals,".

(c)(1) The second paragraph of section 451 of title 28, United States Code, is amended by inserting immediately after "Supreme Court of the United States," the following: "the National Court of Appeals,".

(2) The fourth paragraph of section 451 of title 28, United States Code, is amended by inserting immediately

after "includes judges of" the following: "the National Court of Appeals,".

(d) The second paragraph of section 456 of title 28, United States Code, is amended by inserting immediately after "Justices of the Supreme Court" the following: ", the judges of the National Court of Appeals,".

(e) Section 610 of title 28, United States Code, is amended by inserting immediately after "includes" the following: "the National Court of Appeals,".

(f)(1) Section 1912 of title 28, United States Code, is amended by inserting immediately after "Supreme Court" the following: ", the National Court of Appeals,".

(2)(A) Section 1913 of title 28, United States Code, is amended to read as follows:

"§ 1913. National Court of Appeals; Courts of Appeals

"The fees and costs to be charged and collected in the National Court of Appeals and in each court of appeals shall be prescribed from time to time by the Judicial Conference of the United States. Such fees and costs shall be reasonable and shall be uniform in all the circuits.".

(B) The item relating to section 1913 of title 28, United States Code, in the analysis of chapter 123 of such title, is amended to read as follows:

"1913. National Court of Appeals; courts of appeals.".

(g) The first paragraph of section 2072 of title 28, United States Code, is amended by striking out "of the district courts and courts of appeals of the United States" and inserting in lieu thereof "of the district courts, courts of appeals of the United States, and the National Court of Appeals".

(h) Section 2106 of title 28, United States Code, is amended by inserting immediately after "Supreme Court" the following: ", the National Court of Appeals,".

(i) Section 225(f)(C) of the Federal Salary Act of 1967 (2 U.S.C. 356) is amended by inserting "and the judges of the National Court of Appeals" before the semicolon.

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

II

97TH CONGRESS
1ST SESSION

S. 1874

To amend section 376 of title 28, United States Code, in order to reform and improve the existing program for annuities for survivors of Federal Justices and judges.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19 (legislative day, NOVEMBER 2), 1981

Mr. THURMOND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend section 376 of title 28, United States Code, in order to reform and improve the existing program for annuities for survivors of Federal Justices and judges.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Survivors' Annuities Reform Act of 1981".

SEC. 2. (a) Subsections (b) and (d) of section 376 of title 28, United States Code, are amended by striking out "4.5 percent" each place it appears and inserting in lieu thereof "5.0 percent".

(b) Subsection (c) of section 376 of title 28, United States Code, is amended by striking the first sentence and inserting in lieu thereof the following: "There shall also be deposited to the credit of the 'Judicial Survivors' Annuities Fund,' in accordance with such procedures as may be prescribed by the Comptroller General of the United States, amounts required to maintain the actuarial balance of the program as such amounts are actuarially determined on an annual basis in accordance with the provisions of Public Law 95-595 (31 U.S.C. 68a).".

(c) Subsection (h)(1)(B) of section 376 of title 28, United States Code, is amended by striking clauses (i) and (ii) and inserting in lieu thereof:

> "(i) 10 percent of the average annual salary amount determined in accordance with the provisions of subsection (l) of this section; or
>
> "(ii) 20 percent of such average annual salary amount, divided by the number of children;".

(d) Subsection (h)(1)(C) of section 376 of title 28, United States Code, is amended by striking clauses (ii) and (iii) and inserting in lieu thereof:

> "(ii) 20 percent of the average annual salary amount determined in accordance with

the provisions of subsection (l) of this section; or

"(iii) 40 percent of such average annual salary amount, divided by the number of children;".

(e) Subsection (l) of section 376 of title 28, United States Code, is amended:

(i) by striking out "1¼ percent" and inserting in lieu thereof "1.5 percent"; and

(ii) by striking out the existing proviso and inserting in lieu thereof:

"*Provided,* That such annuity shall not exceed an amount equal to 50 percent of such average annual salary, nor be less than an amount equal to 30 percent of such average annual salary, and that any amount determined in accordance with the provisions of this subsection shall be reduced to the extent required by subsection (d) of this section, if applicable.".

(f) Subsection (h)(2) of section 376 of title 28, United States Code, is amended by striking out the period following "remarriage" and adding "prior to the attainment of sixty years of age.".

SEC. 3. The benefits conferred by this Act shall immediately become available to any individual becoming eligible for an annuity under section 376 of title 28, United States Code, on or after the date upon which this Act becomes effective: *Provided,* That although the rights of any judicial official electing to come within the purview of section 376 of title 28, United States Code, on or after the date upon which this Act becomes effective, shall be determined exclusively under the provisions of that section as amended by this Act, nothing in this Act shall be interpreted to cancel, abrogate, or diminish any rights to which an individual or his or her survivors may be entitled by virtue of that individual having contributed to the judicial survivors annuity fund before the date upon which this Act becomes effective.

SEC. 4. At any time within one hundred and eighty days after the date upon which this Act becomes effective, any judicial official who has been participating in the judicial survivors annuity program created by the Act of October 19, 1976 (90 Stat. 2603), shall be entitled to revoke his or her earlier election to participate in that program and thereby completely withdraw from participation in the program as reformed by this Act: *Provided,* That (a) any such revocation may be effected only by means of a writing filed with the Director of the Administrative Office of the United States Courts, (b) any such writing shall be deemed to have become effective no sooner than the date upon which that writing is received by the Director, (c) upon receipt of such a writing by the Director, any and all rights to survivorship benefits for such judicial official's survivors shall terminate, and all amounts credited to such judicial official's individual account, together with interest at 3 percent per annum, compounded on December 31 of each year to that date of revocation, shall thereafter be returned to that judicial official in a lump-sum refund payment, and (d) any judicial official who effects such a revocation and who subsequently again becomes eligible and elects to join the judicial survivors annuities program created by this Act under the provisions of section 376 of title 28, United States Code, as amended by this Act, shall be permitted to do so only upon the redeposit of the full amount of the refund obtained under this section plus interest at 3 percent per annum, compounded on December 31 of each year from the date of the revocation until the date upon which that amount is redeposited. Any judicial official who fails to effect a revocation in accordance with the right conferred by this section within one hundred and eighty days after the date upon which this Act becomes effective shall be deemed to have irrevocably waived the right to that revocation.

SEC. 5. This Act shall become effective on the first day of the third month following the month in which it is enacted.

II

97TH CONGRESS
2D SESSION

S. 2035

To establish a National Court of Appeals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 29 (legislative day, JANUARY 25), 1982

Mr. HEFLIN introduced the following bill; which was read twice and ordered held at the desk until the close of business February 2, 1982

FEBRUARY 2 (legislative day, JANUARY 25), 1982

Referred to the Committee on the Judiciary

A BILL

To establish a National Court of Appeals, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Court of Appeals Act of 1982".

ESTABLISHMENT OF COURT

SEC. 2. (a) Part I of title 28, United States Code, is amended by inserting immediately after chapter 1 of such title the following new chapter:

"CHAPTER 2—NATIONAL COURT OF APPEALS

"Sec.
"21. Establishment and duties of the Chancellor of the Court.
"22. Establishment and composition of court.
"23. Tenure, salary, and retirement.
"24. Principal seat and terms.
"25. Seal.
"26. Sessions.
"27. Hearings and quorum.
"28. Disqualification of judges.

"§ 21. Establishment and duties of the Chancellor of the Court

"(a)(1) There shall be a Chancellor of the United States appointed by the Chief Justice from amongst judges on active duty as members of a United States Circuit Court of Appeals. The President shall appoint a replacement for the vacated circuit judgeship.

"(2) The Chancellor shall be subject to removal by the Chief Justice.

"(3)(A) The Chancellor may return to his former position as a judge of the United States Circuit Court of Appeals and serve in the same manner as he did prior to becoming Chancellor if he is dismissed, or voluntarily vacates such position.

"(B) The time spent as Chancellor shall be treated as years of judicial service for purposes of such judges seniority status.

"(C) If such Chancellor returns to his former circuit judgeship position, such circuit shall be permitted to have its authorized number of judgeships plus the one additional judgeship resulting from the return of the former Chancellor until such time as one judge leaves the circuit by assuming senior status, retirement, or death.

"(4) The Chancellor shall take the oath or affirmation as provided in section 453 of title 28, United States Code, before performing the duties of his office.

"(5) The Chancellor shall be provided with travel expenses pursuant to section 456 of title 28, United States Code, to the same extent such expenses are provided each Justice or judge of the United States.

"(b) The Chancellor shall be the presiding officer of the National Court of Appeals and shall be responsible for the administration of such court.

"(c) The Chancellor shall establish a pool of judges to serve on the National Court of Appeals from those judges who have informed the Chancellor that they are willing to be so designated if they are either a senior circuit judge under the age of seventy or an active circuit judge, who has had at least seven years of experience as a Federal judge.

"(d) The Chancellor shall select, by lot, from such senior circuit judges, four judges to serve on the certiorari panel, as provided in section 1271 of this title, for a term of twelve months. An eligible case shall be heard by the court if three judges of the certiorari panel so vote.

"(e) The Chancellor shall select panels of five judges to assist the court on a case-by-case basis or individual judges to assist the certiorari panel so that five judges will always be hearing individual cases. The selection process for judges by the Chancellor shall be made with complete fairness under a system designed from time to time by the Judicial Conference of the United States.

"(f) The Chancellor, in the event he decides not to serve, shall appoint a chief judge on a case-by-case basis, to be the presiding judge on the case-by-case panel from one of the four judges selected in the manner described in subsection (e) above, and then will add additional judges to the panel in accordance with the same selection process.

"(g) The Chancellor shall supervise all administrative matters assigned to him by the Chief Justice and assist the Chief Justice with all of his nonjudicial functions including all administrative duties when the Chief Justice requests him to do so.

"§ 22. Establishment and composition of court

"(a) There shall be a National Court of Appeals whose composition shall be determined by the Chancellor of the United States in accordance with this Act.

"(b) A judge shall be eligible to be designated as a judge of the National Court of Appeals if—

"(1) he has informed the Chancellor that he is willing to be so designated; and

"(2) he is not eligible to retire from regular active service under section 371(b)(1) of title 28, United States Code, and will not be so eligible during the applicable six-month period unless he is a senior judge not over seventy years of age.

"(c) In the event of the death, resignation, or ineligibility of a judge designated under this chapter, the Chancellor shall fill the vacancy caused thereby.

"(d) In circuits of one to ten judges not more than one circuit judge from the same court of appeals may serve as a National Court of Appeals judge at the same time, unless he is in senior judge status. In circuits with ten to twenty judges, not more than two such circuit judges of the same court of appeals may serve as National Court of Appeals judges at the same time unless they are in senior judge status. In circuits with twenty to thirty judges, not more than three such circuit judges of the same court of appeals may serve as National Court of Appeals judges at the same time unless they are in senior judge status.

"§ 23. Tenure, salary, and retirement

"(a) The Chancellor of the United States for the National Court of Appeals shall hold office during good behavior.

"(b) The Chancellor shall receive a salary at a rate $1,000 above the rate established pursuant to section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), as adjusted by section 461 of this title for judges of the circuit courts of the United States.

"(c) The Chancellor shall be subject to the resignation and retirement provisions of chapter 17 of this title.

"§ 24. Principal seat and terms

"The principal seat of the National Court of Appeals shall be in the District of Columbia. The court may sit at such times and places within the United States as the Chancellor may designate.

"§ 25. Seal

"The National Court of Appeals shall have a seal which shall be judicially noticed.

"§ 26. Sessions

"The time and place of the sessions of the National Court of Appeals shall be prescribed by the Chancellor pursuant to rules of the court.

"§ 27. Hearings and quorum

"The court may authorize the hearing and determining of cases and controversies by separate panels, each consisting of five judges. Such panels shall sit at the times and places and hear the cases and controversies assigned as the Chancellor directs.

"§ 28. Disqualification of judges

"No judge shall hear or determine an appeal from the decision of a case or issue therein heard or tried by such judge or from the circuit in which he resides.".

(b) The analysis of part I of title 28, United States Code, is amended by inserting immediately below the item relating to chapter 1 of such part, the following new item:

"2. National Court of Appeals .... 21".

OFFICERS AND EMPLOYEES

SEC. 3. (a) Part III of title 28, United States Code. is amended by inserting immediately after chapter 45 of such title, the following new chapter:

"CHAPTER 46—NATIONAL COURT OF APPEALS

"Sec.
"691. Clerk and employees.
"692. Law clerks and secretaries.
"693. Librarian, marshal, and bailiffs.

"§ 691. Clerk and employees

"(a) The Chancellor may appoint a clerk who shall be subject to removal by the Chancellor. The Chancellor may appoint or authorize the appointment of such other officers and employees in such number as may be approved by the Chief Justice.

"(b) The officers and employees of the court shall be subject to the removal by the Chancellor or, if the Chancellor so determines, by the clerk or other officer who appointed them, with the approval of the court.

"(c) The clerk shall pay into the Treasury all fees, costs, and other moneys collected by him and make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him.

"§ 692. Law clerks and secretaries

"The judges of the National Court of Appeals may appoint such law clerks and secretaries as may be necessary.

"§ 693. Librarian, marshal, and bailiffs

"(a) The National Court of Appeals may appoint a librarian and necessary library assistants who shall be subject to removal by the Chancellor.

"(b) The National Court of Appeals may appoint a marshal, who shall be present whenever the court is in session, and shall, jointly with the marshal of the Circuit Courts of Appeal within whose jurisdiction the case is being orally argued if outside the District of Columbia, take charge of all property of the United States used by the court or its employees, and perform such other duties as the court may direct. The marshal shall be subject to removal by the Chancellor. The marshal, with the approval of the court, may employ necessary bailiffs who shall attend the court, preserve order, and perform such other necessary duties as the court or marshal may direct. The bailiffs shall receive the same compensation as bailiffs employed for the district courts.".

(b) The analysis of part III of title 28, United States Code, is amended by inserting immediately below the item relating to chapter 45 of such title, the following new item:

"46. National Court of Appeals .... 691".

JURISDICTION AND REVIEW

SEC. 4. (a) Part IV of title 28, United States Code, is amended by adding immediately after chapter 81 of such title the following new chapter:

"CHAPTER 82—NATIONAL COURT OF APPEALS

"Sec.
"1271. Jurisdiction.
"1272. Finality of decisions.

"§ 1271. Jurisdiction

"The National Court of Appeals shall have jurisdiction of cases referred to it by the Supreme Court, including cases which the Supreme Court—

"(1) directs the National Court of Appeals to decide; and

"(2) transfers to the National Court of Appeals for such Court to determine whether or not to grant certiorari.

"§ 1272. Finality of decisions

"(a) The National Court of Appeals may deny review in any case referred to it by the Supreme Court unless directed by the Supreme Court to decide the case.

"(b) Unless modified or overruled by the Supreme Court, the decisions of the National Court of Appeals shall be binding on all courts of the United States, and, with respect to questions arising under the Constitution, laws, or treaties of the United States, on all other courts.".

(b) Chapter 81 of title 28, United States Code (relating to the jurisdiction of the Supreme Court), is amended by adding at the end thereof the following new section:

"§ 1259. National Court of Appeals

"(a) After denying certiorari or in lieu of noting probable jurisdiction of an appeal in any case before it, the Supreme Court may refer any such case to the National Court of Appeals. The Supreme Court may, and in cases subject to review by appeal, likewise may direct the National Court of Appeals to decide any case so referred.

"(b) Any case in the National Court of Appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any such case before or after rendition of judgment or decree.".

(c)(1) The analysis of part IV of title 28, United States Code, is amended by inserting immediately below the item relating to chapter 81 of such title, the following new item:

"82. National Court of Appeals .... 1281".

(2) The analysis of chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1259. National Court of Appeals.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 5. (a)(1) The first paragraph of section 331 of title 28, United States Code, is amended by inserting immediately after "shall summon annually" the following: "the Chancellor of the National Court of Appeals,".

(2) The third paragraph of such section is amended by inserting immediately before the first sentence the following new sentence: "If the Chancellor of the National Court of Appeals is unable to attend, the Chief Justice may summon any other judge from such court.".

(b)(1) Section 372(a) of title 28, United States Code, is amended—

(A) by inserting in the third paragraph immediately following "Supreme Court," the following: "the Chancellor of the National Court of Appeals,"; and

(B) by inserting in the fifth paragraph, after "Patent Appeals," the following: "the National Court of Appeals,".

(2) Section 372(b) of title 28, United States Code, is amended—

(A) by inserting immediately after "Chief Justice of the United States in the case of" the following: "the Chancellor of the National Court of Appeals or"; and

(B) by inserting immediately after "Chief judge of his court in the case of a judge of the" the following: "National Court of Appeals,".

(c)(1) The second paragraph of section 451 of title 28, United States Code, is amended by inserting immediately after "Supreme Court of the United States," the following: "the National Court of Appeals,".

(2) The fourth paragraph of section 451 of title 28, United States Code is amended by inserting immediately after "includes judges of" the following: "the National Court of Appeals,".

(d) The second paragraph of section 456 of title 28, United States Code, is amended by inserting immediately after "Justices of the Supreme Court" the following: ", the judges of the National Court of Appeals,".

(e) Section 610 of title 28, United States Code, is amended by inserting immediately after "includes" the following: "the National Court of Appeals,".

(f)(1) Section 1912 of title 28, United States Code, is amended by inserting immediately after "Supreme Court" the following: ", the National Court of Appeals,".

(2)(A) Section 1913 of title 28, United States Code, is amended to read as follows:

"§ 1913. National Court of Appeals; courts of appeals

"The fees and costs to be charged and collected in the National Court of Appeals and in each court of appeals shall be prescribed from time to time by the Judicial Conference of the United States. Such fees and costs shall be reasonable and shall be uniform in all the circuits.".

(B) The item relating to section 1913 of title 28, United States Code, in the analysis of chapter 123 of such title, is amended to read as follows:

"1913. National Court of Appeals; courts of appeals.".

(g) The first paragraph of section 2072 of title 28, United States Code, is amended by striking out "of the district courts and courts of appeals of the United States" and inserting in lieu thereof "of the district courts, courts of appeals of the United States, and the National Court of Appeals".

(h) Section 2106 of title 28, United States Code, is amended by inserting immediately after "Supreme Court" the following: ", the National Court of Appeals,".

(i) Section 225(f)(C) of the Federal Salary Act of 1967 (2 U.S.C. 356) is amended by inserting "and the judges of the National Court of Appeals" before the semicolon.

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

II

97TH CONGRESS
2D SESSION

S. 2296

To provide that district courts shall have jurisdiction in Department of Labor Employees' Compensation Appeals Board actions.

IN THE SENATE OF THE UNITED STATES

MARCH 29 (legislative day, FEBRUARY 22), 1982

Mr. HEFLIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To provide that district courts shall have jurisdiction in Department of Labor Employees' Compensation Appeals Board actions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 85 of title 28, United States Code, is amended—

(1) by adding at the end thereof the following:

"§ 1367. Employees' Compensation Appeals Board of the Department of Labor

"The district courts shall have jurisdiction of any civil action to enforce, in whole or in part, any order of the Employees' Compensation Appeals Board, established pursuant to section 8149 of title 5, United States Code, and to enjoin or suspend, in whole or in part, any decision or order of such Board."; and

(2) by adding at the end of the table of sections the following item:

"1367. Employees' Compensation Appeals Board of the Department of Labor.".

SEC. 2. Section 8127 of title 5, United States Code, is amended by—

(1) redesignating subsection (b) as subsection (d); and

(2) inserting after subsection (a) the following new subsections:

"(b) The Secretary may, by rule or regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Secretary under this subchapter. Any agreement in violation of such rules and regulations shall be void. Whenever the Secretary, in any claim before him for benefits under this subchapter, makes a determination favorable to the claimant, he may, if the claimant was represented by an attorney in connection with such claim, fix a reasonable fee to compensate such attorney for the services performed by him in connection with such claim. Upon making a determination favorable to such claimant, the Secretary shall set aside, out of the award to be made to such claimant, 25 per centum of such award, until such time as the Secretary certifies the amount of fees to be granted to such attorney. If, as a result of a determination by the Secretary, such claimant is entitled to past-due benefits under this subchapter, the Secretary shall make a determination regarding such fees and certify for payment (out of such past-due benefits) to such attorney an amount equal to—

"(1) 25 per centum of the total amount of such past-due benefits,

"(2) the amount of the attorney's fee so fixed, or

"(3) the amount agreed upon between the claimant and such attorney as the fee for such attorney's services,

whichever is less, within sixty days after the date of the determination made regarding such claimant.

"(c) Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 per centum of the total of the past-due benefits to which the claimant is entitled by reason of such judgment. The court shall set aside, out of such award, 25 per centum of such award until such time as the court makes a judgment regarding such fees and the Secretary certifies for disbursement the amount of fees to be granted by the court to such attorney. The Secretary shall certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits and such amount shall be disbursed directly to such attorney within sixty days after the court's judgment regarding the claimant. In case of any such judgment, no other fee may be payable or certified for payment for such representation except as provided in this section.".

SEC. 3. (a) The first sentence of section 8128(b) of title 5, United States Code, is amended to read as follows:

"(b) The action of the Secretary or his designee in allowing or denying a payment under this subchapter is a final action with respect to all questions of law and fact and is reviewable only by the commencement of a civil action in a United States district court as provided in this section.".

(b) Section 8128 of title 5 of the United States Code is amended by adding at the end thereof the following:

"(c)(1) Any individual, after a final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or in the District Court of the United States for the District of Columbia. As part of his answer the Secretary shall file a certified copy of the transcript of the record including evidence upon which the findings and decision complained of are based. The court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the case for a rehearing. The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive. The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in so modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

"(2) The Secretary is authorized to delegate to any member, officer, or employee of the Department of Labor designated by him, any of the powers conferred upon him by this section, and is authorized to be represented by his own attorney in any court in any case or proceeding arising under the provision of this section.

"(3) The findings and decision of the Secretary after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided.".

SEC. 4. (a) Section 8130 of title 5, United States Code, is repealed.

(b) Chapter 81 of title 5, United States Code, is amended in the chapter analysis by repealing the item relating to section 8130.

○

ADDITIONAL SUBMISSIONS

U.S. DEPARTMENT OF LABOR
SECRETARY OF LABOR
WASHINGTON, D.C.

SEP 29 1982

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We have been advised by your staff that hearings are taking place on S. 2296, a bill "to provide that district courts shall have jurisdiction in Department of Labor Employees' Compensation Appeals Board actions." We would therefore like to indicate for the record our opposition to this legislation.

Federal employees who suffer a work related injury or illness are entitled to compensation under the Federal Employees' Compensation Act (FECA). Initial decisions are made by the Office of Workers' Compensation Programs on behalf of the Secretary of Labor, and opportunities for administrative hearings and review are provided. 5 U.S.C. 8124, 8128, 8149. As described in Attachment A, the Employees' Compensation Appeals Board (ECAB), the final level of review, was created with the specific purpose of assuring an independent check on administrative action.

An independent administrative review mechanism has many advantages over a court review mechanism. Among these are a reduction in delay and in litigation costs. Absent convincing evidence that the Federal court system is a more effective vehicle for processing large numbers of FECA cases, we see no need to alter the system for case review which has been in effect for many years.[1] In fact, it is our view that S.2296 would tend to unduly prolong review proceedings without any promise of benefit to employees. Through provisions for legal fees, the bill would encourage the filing of cases in the Federal district courts by dissatisfied claimants and their counsel. This would necessitate additional government expenditures for the courts, and for defense of the government's position both at the district court and subsequent review levels. Moreover, it would further delay important litigation already crowding court dockets, especially given the length of the records in many of these cases. The entire array of the case law under the FECA, as determined by the ECAB and its predecessors, would be reopened to new interpretation, casting considerable uncertainty over program operations for many years. Further, different interpretations in various circuits would emerge, a problem avoided by the ECAB system.

---

[1] It should be noted that there is no right to Federal court review in such proceedings. The FECA creates a right against the Federal sovereign that is otherwise not present, in contrast to the situation for private sector workers for whom workers' compensation programs represent an alternative to prior common law relief. Accordingly, as set forth in Blanc v. U.S., 2 Cir., 1957, 244 F.2d 708, 710 cert. denied 355 U.S. 874:

> "At least since United States v. Babcock, 250 U.S. 328, 39 S.Ct. 464, 63 L.Ed. 1011 and Dismuke v. United States, 297 U.S. 167, 56 S.Ct. 400, 80 L.Ed. 561, it has been well settled that, when the government creates the right to assert a claim against it, it need not provide for a judicial remedy. That applies aptly to allowances to federal employees under this statute which are grants which Congress could make to beneficiaries who would be determined in whatever way it saw fit to provide. Calderon v. Tobin, 88 U.S. App. D.C. 134, 187 F.2d 514, certiorari denied 341 U.S. 935, 71 S.Ct. 854, 95 L.Ed. 1363; Hancock v. Mitchell, 3 Cir., 231 F.2d 652. It saw fit, without creating a right to sue the government or to court review of agency action, to provide for the allowance of compensation benefits promptly to those employees of the government which a specially constituted agency determined were within the statutory category. Dahn v. Davis, 258 U.S. 421, 431, 42 S.Ct. 320, 66 L.Ed. 696."

Of equal importance is the fact that S. 2296 would greatly complicate the operation of the FECA program at a time when this Administration's pending FECA reform legislation would seek to simplify those operations to improve our claims processing capabilities. In its submission of March 30 of this year, copy enclosed, the Administration proposed, among other things, to provide for a more orderly process by which claims determinations are reviewed to ensure that cases are properly developed before they go to the ECAB. These proposals are designed to eliminate the serious overload of cases before the Board. Together with proposals to promote more prompt submission by employing agencies of relevant evidence, these proposals should further improve fairness to claimants, and offer several distinct stages of independent review of an initial decision.

In addition, S.2296 contains several technical problems. It is possible under the bill, for example, to take a case to the district courts before the ECAB has even considered the matter.

In addition, it might be possible under the bill for Federal employing agencies to avail themselves of this remedy and thus circumvent the non-adversarial FECA system -- a system which would be improved upon by various aspects of the proposed Administration FECA legislation. S.2296 would also repeal 5 U.S.C. 8130, which precludes assignment of claims for compensation and exempts such claims from the claims of creditors. Such a change would remove an important protection of claimants for no apparent reason. If the concern to which this repeal is addressed is the problem of collecting attorney fees under present law, we would suggest that a better solution is adoption of the Administration proposal to create a lien on an award for such fees.

For these reasons, we oppose enactment of this legislation.

The Office of Management and Budget advises that there is no objection to submission of this report from the standpoint of the Administration's program.

Sincerely,

Raymond J. Donovan

Raymond J. Donovan

Attachment A

History of Employees' Compensation Appeals Board (ECAB)

The ECAB began functioning in the latter part of 1946 as a three-member, quasi-judicial body established within the Federal Security Agency, in accordance with the provisions of Reorganization Plan No. 2 of 1946, effective July 16, 1946. 60 Stat. 1096. That Plan provided, in pertinent part, as follows:

> Sec. 3 United State Employees' Compensation Commission - The functions of the United States Employees' Compensation Commission are transferred to the Federal Security Agency and shall be performed in such manner and under such rules and regulations as the Federal Security Administrator shall prescribe. Such regulations shall provide for a board of three persons to be designated or appointed by the Federal Security Administrator with authority to hear and, subject to applicable law, make final decision on appeals taken from determinations and awards with respect to claims of employees of the Federal Government or the District of Columbia. The United State Employees' Compensation Commission is abolished.

In a letter to Congress dated May 16, 1946, President Truman stated that Reorganization Plan No. 2 "transfers the function of the United States Employees' Compensation Commission to the Federal Security Administrator and provides for a three-member board of appeals to hear and finally decide appeals on claims of Government employees." President Truman pointed out that the plan "will provide the advantages of a single official in charge of operations while affording claimants the protection of a three-member board for the final decision of appeals on claims." The President noted that the scheme was successfully used in deciding veterans' claims and by many States in worker's compensation claims.

In its Report on Reorganization Plan No. 2, the Senate Committee on the Judiciary pointed out that the strongest legal argument advanced by opponents of the plan was the contention that it would give the Federal Security Administrator "control over the exercise of judgment and discretion with respect to the functions of the proposed appeals board" (S. Rept. No. 1671, 79th Cong., 2d Sess. (1946), p. 4). Significantly, however, the Committee construed the language in question as relating "only to the 'manner' of performance of functions in a technical sense, i.e., forms, procedures, etc.," (ibid), and rejected the contention that the Board ~~would~~ be stripped of independent decision-making authority. The plan was approved by the Committee. Accordingly, the Bureau of Employees' Compensation and the Employees' Compensation Appeals board began functioning in the Federal Security Agency.

Reorganization Plan No. 19 of 1950, effective May 24, 1950, transferred both the Bureau of Employees' Compensation and the Employees' Compensation Appeals Board to the Department of Labor. This plan stated that "[t]he Board shall continue to have authority to hear and, subject to applicable law and the rules and regulations of the Secretary of Labor, to make final decision on appeals taken from determinations and awards with respect to claims" of federal employees. The Secretary's regulations, from the inception of the Appeals Board in the Labor Department, have provided that the Board's "decision shall not be subject to review, except by the Board." See 20 CFR 501.6(c).

On September 6, 1966, Congress enacted Public Law 89-554, which recodified title 5 of the United States Code. Title 5 contains the laws relating to the organization of the Government of the United States and to its civilian officers and employees. 5 U.S.C. 8149 was part of that recodification. Section 7 of the recodification statute, 80 Stat. 631, stated that the purpose of the recodification was to restate the law without substantive change. Thus 5 U.S.C. 8149 codifies what already was the law by virtue of Reorganization Plan No. 19 of 1950.

In that recodification, the Federal Employees' Compensation Act in 1966, Congress mandated that the Secretary of Labor provide by regulation for an Employees' Compensation Appeals Board of three individuals appointed by him "with authority to hear and, subject to applicable law and the rules and regulations of the Secretary, make final decisions on appeals taken from determinations and awards with respect to claims of employees." 5 U.S.C. 8149.

October 8, 1982

James A. Yance
Cunningham, Bounds & Byrd
Mobile, Alabama

Dear Jim:

Thank you for providing me a copy of the Resolution of the Alabama Trial Lawyers Association's support of Senate Bill 2296. On September 24, 1982, the Subcommittee on Courts conducted hearings on this most important legislation, and three witnesses from Alabama referred to the support of the Association.

I am hopeful that in the coming Congress, similar legislation can be actively pursued and considered by the United States Senate. I will request that the Resolution of the Alabama Trial Lawyers Association become part of the Record of the hearing process for this Congress.

Once again, thank you for providing me with this information, and if I can be of any assistaace to you, or the Trial Lawyers, please do not hesitate to call upon me.

Sincerely yours,

HOWELL HEFLIN

HH/abm

ALABAMA TRIAL LAWYERS ASSOCIATION

328 DEXTER AVENUE • MONTGOMERY, ALABAMA 36104 • PHONE: 262-4974

PRESIDENT
JAMES A. YANCE
Mobile

PRESIDENT ELECT
RALPH W. HORNSBY
Huntsville

VICE PRESIDENT
HERMAN COBB
Dothan

SECRETARY
ALVA C. CAINE
Birmingham

TREASURER
GREGORY S. CUSIMANO
Gadsden

IMMEDIATE PAST PRESIDENT
LANNY S. VINES
Birmingham

EXECUTIVE DIRECTORS
ROBERT M. CLECKLER, SR.
DON J. GILBERT
Montgomery

PAST PRESIDENTS
W. E. BROBSTON
(1900-1961) Bessemer
FRANCIS H. HARE, SR.
Birmingham
JOHN C. GODBOLD
Montgomery
WALDROP WINDHAM
(1910-1971) Birmingham
GLEN T. BASHORE
Clanton
FRANK J. TIPLER
Andalusia
RICHARD L. JONES
Birmingham
GEORGE HAWKINS
Gadsden
ROSCOE B. HOGAN
Birmingham
ROBERT T. CUNNINGHAM
Mobile
HOWELL HEFLIN
Tuscumbia
TRUMAN HOBBS
Montgomery
NEAL C. NEWELL
Birmingham
RICHARD BOUNDS
Mobile
CAREY WALKER
Huntsville
SIDNEY FULLER
Andalusia
T. ERIC EMBRY
Birmingham
ALBERT W. COPELAND
Montgomery
FRANCIS H. HARE, JR.
Birmingham
ERNEST C. HORNSBY
Tallassee
DAVID B. CAUTHEN
Decatur
RICHARD M. JORDAN
Montgomery
EDWARD L. HARDIN, JR.
Birmingham
ROBERT L. BYRD, JR.
Mobile
WILLIAM W. SMITH
Birmingham
TED TAYLOR
Prattville
JOHN DAVID KNIGHT
Cullman
WARREN L. HAMMOND, JR.
Mobile

RESOLUTION

ALABAMA TRIAL LAWYERS ASSOCIATION

WHEREAS, The Federal Employees' Compensation Act has proved woefully inadequate to compensate injured and diseased Federal employees; and,

WHEREAS, claimants under the Act have experienced lengthy delays in action on their claims and have been denied access to Federal Courts; and,

WHEREAS, United States Senator Howell T. Heflin has introduced legislation to remedy these wrongs in Senate Bill S.2296; therefore,

BE IT RESOLVED that the Executive Committee and the Board of Governors of the Alabama Trial Lawyers Association unanimously endorse the passage of this legislation and direct the Executive Directors to forward a copy of this Resolution to each Alabama Congressman and Senator and to the Association of Trial Lawyers of America with the request that they support passage of this legislation.

APPROVED: James A. Yance
JAMES A. YANCE
PRESIDENT

WITNESS: Don J. Gilbert
DON J. GILBERT
EXECUTIVE DIRECTOR

DATE: August 5, 1982